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

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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, August 12, 2008
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Rules and Regulations

Federal Register

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Tuesday, August 5, 2008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0586; Directorate Identifier 2008–NM–043–AD; Amendment 39–15625; AD 2008–16–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401 and –402 Airplanes

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

ACTION: Final rule.

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

There was one reported failure of the elevator centering torsion spring. Investigation revealed that the tangs on the torsion spring had been bent due to difficulty encountered during installation of the elevator centering torsion spring on the horizontal stabilizer torque tube. The bending of the tangs on the torsion spring would degrade its durability and could lead to premature failure of the elevator centering torsion spring. A control rod disconnect between the elevator aft quadrant and the elevator Power Control Unit input torque tube, in combination with the loss or reduction in elevator centering capability, could result in a significant reduction in aircraft pitch control.

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

DATES: This AD becomes effective September 9, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2008.

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

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 23, 2008 (73 FR 30005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There was one reported failure of the elevator centering torsion spring. Investigation revealed that the tangs on the torsion spring had been bent due to difficulty encountered during installation of the elevator centering torsion spring on the horizontal stabilizer torque tube. The bending of the tangs on the torsion spring would degrade its durability and could lead to premature failure of the elevator centering torsion spring. A control rod disconnect between the elevator aft quadrant and the elevator Power Control Unit input torque tube, in combination with the loss or reduction in elevator centering capability, could result in a significant reduction in aircraft pitch control.

Corrective actions include replacing all elevator centering torsion springs with new elevator centering torsion springs. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 42 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,746 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $96,852, or $2,306 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–07 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15625. Docket No. FAA–2008–0586; Directorate Identifier 2008–NM–043–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, –401 and –402 airplanes, certificated in any category, having serial numbers 4001, 4003, 4004, and 4006 through 4081.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

There was one reported failure of the elevator centering torsion spring. Investigation revealed that the tangs on the torsion spring had been bent due to difficulty encountered during installation of the elevator centering torsion spring on the horizontal stabilizer torque tube. The bending of the tangs on the torsion spring would degrade its durability and could lead to premature failure of the elevator centering torsion spring. A control rod disconnect between the elevator aft quadrant and the elevator Power Control Unit input torque tube, in combination with the loss or reduction in elevator centering capability, could result in a significant reduction in aircraft pitch control.

Corrective actions include replacing all elevator centering torsion springs with new elevator centering torsion springs.

Actions and Compliance

(f) Unless already done: Prior to the accumulation of 22,000 total flight hours, or within 5,000 flight hours after the effective date of this AD, whichever comes later, replace all elevator centering torsion springs with new elevator centering torsion springs by incorporating Modsum 4–113482, in accordance with Bombardier Service Bulletin 84–27–31, dated April 27, 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–05R1, dated February 27, 2008, and Bombardier Service Bulletin 84–27–31, dated April 27, 2007, for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 84–27–31, dated April 27, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17612 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0557; Directorate Identifier 2007–NM–364–AD; Amendment 39–15626; AD 2008–16–08]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX Airplanes

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

ACTION: Final rule.

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

During approach, a Falcon 2000EX operator experienced a temporary loss of the 4 Electronic Flight Instrumentation System (EFIS) display units followed by a consecutive restart of the avionics. During initial investigation, a loose connection on the DC load distribution system was discovered and determined to be the root cause of this event. However, further analysis pointed out that large electrical transients on the essential bus bar may possibly cause simultaneous and temporary power shortage on both sides of the electrical system.

This Airworthiness Directive (AD) * * * action is necessary to prevent a momentary loss of data on the EFIS screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane. * * *

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

DATES: This AD becomes effective September 9, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2008.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 20, 2008 (73 FR 29091). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During approach, a Falcon 2000EX operator experienced a temporary loss of the 4 Electronic Flight Instrumentation System (EFIS) display units followed by a consecutive restart of the avionics. During initial investigation, a loose connection on the DC load distribution system was discovered and determined to be the root cause of this event. However, further analysis pointed out that large electrical transients on the essential bus bar may possibly cause simultaneous and temporary power shortage on both sides of the electrical system.

This Airworthiness Directive (AD) requires a wiring modification of the GCUs (Generator Control Units) to increase the electrical system robustness. This action is necessary to prevent a momentary loss of data on the EFIS screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane. This action is intended to address the identified unsafe condition.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 57 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $36,480, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–08 Dassault Aviation: Amendment 39–15626. Docket No. FAA–2008–0557; Directorate Identifier 2007–NM–364–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes from serial number 1 to 107 inclusive, certificated in any category; which have not been modified by Dassault Service Bulletin (SB) F2000EX–141.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

During approach, a Falcon 2000EX operator experienced a temporary loss of the 4 Electronic Flight Instrumentation System (EFIS) display units followed by a consecutive restart of the avionics. During initial investigation, a loose connection on the DC load distribution system was discovered and determined to be the root cause of this event. However, further analysis pointed out that large electrical transients on the essential bus bar may possibly cause simultaneous and temporary power shortage on both sides of the electrical system.

This Airworthiness Directive (AD) requires a wiring modification of the GCUs (Generator Control Units) to increase the electrical system robustness. This action is necessary to prevent a momentary loss of data on the EFIS screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane. This action is intended to address the identified unsafe condition.

Actions and Compliance

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

(1) Within 13 months after the effective date of this AD, modify the GCU electrical wiring as instructed in the Accomplishment Instructions of Dassault Service Bulletin F2000EX–141, Revision 1, dated November 26, 2007.

(2) Actions done prior to the effective date of this AD according to Dassault Service Bulletin F2000EX–141, dated February 16, 2007, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0290, dated November 26, 2007; and Dassault Service Bulletin F2000EX–141, Revision 1, dated November 26, 2007; for related information.

Material Incorporated by Reference

(i) You must use Dassault Service Bulletin F2000EX–141, Revision 1, dated November 26, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17746 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0541; Directorate Identifier 2008–NM–063–AD; Amendment 39–15624; AD 2008–16–06]

RIN 2120–AA64

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

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

ACTION: Final rule.

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation

Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. * * *

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

* * * * *

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

DATES: This AD becomes effective September 9, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 13, 2008 (73 FR 27477). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–013 which introduces additional bonding leads between pipes, structure and various components to improve the electrical bond paths within the fuel tank areas. This design change is identified by modification number JM41659. Additionally, SB J41–28–013 provides instructions to inspect the existing bonding leads, to replace any defective leads and to examine all fuel system pipe runs in the wings to ensure appropriate clearances are maintained.

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

For the reason stated above, this EASA Airworthiness Directive (AD) requires the installation of additional bonding leads, inspection [for defects] of existing bonding leads and [for clearance of] all fuel system pipe runs in the wings and follow-on corrective actions, as necessary.

Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 7 products of U.S. registry. We also estimate that it will take about 80 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,700 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $56,700, or $8,100 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–06 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15624. Docket No. FAA–2008–0541; Directorate Identifier 2008–NM–063–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2008.

Affected ADs

(b) None.

Applicability

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

Subject

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

Reason

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–013 which introduces additional bonding leads between pipes, structure and various components to improve the electrical bond paths within the fuel tank areas. This design change is identified by modification number JM41659. Additionally, SB J41–28–013 provides instructions to inspect the existing bonding leads, to replace any defective leads and to examine all fuel system pipe runs in the wings to ensure appropriate clearances are maintained.

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

For the reason stated above, this EASA Airworthiness Directive (AD) requires the installation of additional bonding leads, inspection [for defects] of existing bonding leads and [for clearance of] all fuel system pipe runs in the wings and follow-on corrective actions, as necessary.

Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs.

Actions and Compliance

(f) Within 24 months after the effective date of this AD, unless already done, do the following actions.

(1) Inspect the bonding leads between ribs 1 and 9, and between ribs 16 and 19, in the left-hand (LH) and right-hand (RH) wings in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; and, before next flight, replace all defective bonding leads with airworthy parts in accordance with the service bulletin.

(2) Inspect all fuel system pipe runs inside the LH and RH wings in accordance with paragraph 2.B.(3) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; and, if incorrect clearances are found, before next flight, adjust clearances in accordance with the service bulletin.

(3) Install additional electrical bonding of components within the LH and RH wings in accordance with paragraphs 2.B.(4) to 2.B.(15) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0040, dated February 27, 2008; and BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17621 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0520; Directorate Identifier 2008–NM–018–AD; Amendment 39–15630; AD 2008–16–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 series airplanes. This AD requires repetitive inspections for any wrinkle in certain external skin panels, and for cracking at the fuselage bulkhead shear tie end fastener locations at certain stations of Section 48 of the fuselage; and doing related investigative and corrective actions if necessary. This AD results from a report of cracks found in the external skin on the left and right sides of the Section 48 panel of the fuselage on two airplanes

with skin wrinkles found at two of the external crack locations. We are issuing this AD to detect and correct wrinkles and cracks in certain external skin panels of Section 48, which could join together and result in reduced structural integrity of support structure for the vertical and horizontal stabilizers and inability of the airplane to sustain limit loads.

DATES: This AD is effective September 9, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 777–200 series airplanes. That NPRM was published in the **Federal Register** on May 7, 2008 (73 FR 25599). That NPRM proposed to require repetitive inspections for any wrinkle in certain external skin panels, and for cracking at the fuselage bulkhead shear tie end fastener locations at certain stations of Section 48 of the fuselage; and doing related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing concurs with the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that the inspections in this AD affect 13 airplanes of U.S. registry. We also estimate that it takes about 15 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $15,600, or $1,200 per product, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–12 Boeing: Amendment 39–15630. Docket No. FAA–2008–0520; Directorate Identifier 2008–NM–018–AD.

Effective Date

(a) This airworthiness directive (AD) is effective September 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–53A0051, dated November 8, 2007.

Unsafe Condition

(d) This AD results from a report of cracks found in the external skin on the left and right sides of the Section 48 fuselage panel on two airplanes with skin wrinkles found at two of the external crack locations. We are issuing this AD to detect and correct wrinkles and cracks in certain external skin panels of Section 48, which could join together and result in reduced structural integrity of support structure for the vertical and horizontal stabilizers and inability of the airplane to sustain limit loads.

Compliance

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

Repetitive Inspections/Investigative and Corrective Actions

(f) At the applicable compliance times specified in paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 777–53A0051, dated November 8, 2007; except as provided by paragraph (g) of this AD: Do the applicable inspections for any wrinkle of the external skin and for cracking at the fuselage bulkhead shear tie end fastener locations at Stations 2195.75, 2221.65, and 2245.70 of the Section 48 panel of the fuselage, between

stringers 5 and 10 on the left and right sides; and do all the applicable investigative and corrective actions; by doing all of the applicable actions in accordance with the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Do all applicable investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified in paragraph 1.E. of the service bulletin.

Exception to Compliance Times

(g) Where Boeing Alert Service Bulletin 777–53A0051, dated November 8, 2007, specifies counting the compliance time from ''* * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

Exception to Corrective Actions

(h) If any damage beyond the repair limits specified in Boeing Alert Service Bulletin 777–53A0051, dated November 8, 2007, is found during any inspection required by this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590 has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 777–53A0051, dated November 8, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17749 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0413; Directorate Identifier 2008–NM–003–AD; Amendment 39–15631; AD 2008–16–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD requires replacing the pushrods for the left and right elevator tab control mechanisms with new, improved pushrods. This AD results from a report of a rod end fracture on a rudder power control unit (PCU) control rod, which is similar to the ones used for the elevator tab pushrods. Analysis revealed that the fractured rod end had an incorrect hardness, which had probably occurred during the manufacture of the control rod. We are issuing this AD to prevent fracture of the elevator tab pushrod ends, which could result in excessive in-flight vibrations of the elevator tab, possible loss of the elevator tab, and consequent loss of controllability of the airplane.

DATES: This AD is effective September 9, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That NPRM was published in the **Federal Register** on April 24, 2008 (73 FR 22090). That NPRM proposed to require replacing the pushrods for the left and right elevator tab control mechanisms with new, improved pushrods.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the two comments received. Boeing concurs with the contents of the NPRM, and Continental Airlines has no issues with the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 715 airplanes of U.S. registry. We also estimate that it takes about 4 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost about $8,036 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,974,540, or $8,356 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–13 Boeing: Amendment 39–15631. Docket No. FAA–2008–0413; Directorate Identifier 2008–NM–003–AD.

Effective Date

(a) This airworthiness directive (AD) is effective September 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category; line numbers 1 through 2196 inclusive.

Unsafe Condition

(d) This AD results from a report of a rod end fracture on a rudder power control unit (PCU) control rod, which is similar to the ones used for the elevator tab pushrods. Analysis revealed that the fractured rod end had an incorrect hardness, which had probably occurred during the manufacture of the control rod. We are issuing this AD to prevent fracture of the elevator tab pushrod ends, which could result in excessive in-flight vibrations of the elevator tab, possible loss of the elevator tab, and consequent loss of controllability of the airplane.

Compliance

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

Pushrod Replacement

(f) At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Replace the pushrods for the left and right elevator tab control mechanisms with new, improved pushrods by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007.

Parts Installation

(g) As of the effective date of this AD, no person may install a pushrod assembly, part number 65–45166–24, on any airplane.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, *ATTN:* Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17748 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 102, 162, 163, and 178

[Docket No. USCBP–2007–0056; CBP Dec. 08–29]

RIN 1505–AB76

United States-Morocco Free Trade Agreement

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to title 19 of the Code of Federal Regulations (''CFR'') which were published in the **Federal Register** on June 29, 2007, as CBP Dec. 07–51 to implement the preferential tariff treatment and other customs-related provisions of the United States-Morocco Free Trade Agreement signed by the United States and the Kingdom of Morocco.

DATES: Final Rule effective September 4, 2008.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of International Trade, (202–863–6503).

Other Operational Aspects: Heather Sykes, Office of International Trade, (202–863–6099).

Legal Aspects: Karen Greene, Office of International Trade, (202–572–8838).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2004, the United States and the Kingdom of Morocco (the ''Parties'') signed the U.S.-Morocco Free Trade Agreement (''MFTA'' or ''Agreement''). The stated objectives of the MFTA are to: Encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the MFTA, for its joint administration and for the resolution of disputes; and establish a framework for further regional and multilateral cooperation to expand and enhance the benefits of the MFTA.

The provisions of the MFTA were adopted by the United States with the enactment of the United States-Morocco Free Trade Agreement Implementation Act (the ''Act''), Public Law 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note), on August 17, 2004. Section 205 of the Act requires that regulations be prescribed as necessary to implement these provisions of the MFTA.

On December 22, 2005, the President signed Proclamation 7971 to implement the provisions of the MFTA. The proclamation, which was published in the **Federal Register** on December 27, 2005 (70 FR 76649), modified the Harmonized Tariff Schedule of the United States (''HTSUS'') as set forth in Annexes I and II of Publication 3721 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 27, incorporating the relevant MFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the MFTA where the special program indicator ''MA'' appears in parenthesis in the ''Special'' rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XII to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the MFTA.

Those customs-related MFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Four (Textiles and Apparel), Chapter Five (Rules of Origin), and Chapter Six (Customs Administration).

In Chapter One of the MFTA, certain general definitions in Article 1.3 have been incorporated into the MFTA implementing regulations. In MFTA Chapter Two, Article 2.6 (Goods Re-entered after Repair or Alteration) requires implementation by CBP.

Chapter Four of the MFTA sets forth the measures relating to trade in textile and apparel goods between Morocco and the United States under the MFTA. The provisions within Chapter Four that require regulatory action by CBP are Article 4.3 (Rules of Origin and Related Matters) and Article 4.5 (Definitions).

Chapter Five of the MFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Morocco (MFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 5.1, originating goods may be grouped in three broad categories: (1) Goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 4–A or Annex 5–A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good's appraised value must be attributed to the cost or value of materials produced in one or both of the Parties plus the direct costs of processing operations performed in one or both of the Parties; and (3) goods that satisfy the product-specific rules set forth in Annex 4–A (textile or apparel goods) or Annex 5–A (certain non-textile or non-apparel goods).

Article 5.2 explains that the term ''new or different article of commerce'' means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 5.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. CBP notes that, pursuant to letters of understanding exchanged between the Parties on June 16, 2004, in determining whether a good meets the definition of a '' new or different article of commerce'' in § 10.769(i), the United States should be guided by the provisions of part 102 of the CBP regulations (19 CFR part 102).

Article 5.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the MFTA. Articles 5.5 and 5.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 5.7 through 5.9 consist of additional sub-rules applicable to originating goods, involving retail packaging materials, packing materials for shipment, indirect materials, and transit and transshipment. In addition, Articles 5.10 and 5.11 set forth the procedural requirements that apply under the MFTA, in particular with regard to importer claims for preferential tariff treatment. Article 5.14 provides definitions of certain of the terms used in Chapter Five of the MFTA. The basic rules of origin in Chapter Five of the MFTA are set forth in General Note 27, HTSUS, and in part 102 of title 19 of the Code of Federal Regulations.

Chapter Six sets forth the customs operational provisions related to the implementation and administration of the MFTA.

Customs and Border Protection (''CBP'') is responsible for administering the provisions of the MFTA and the Act

that relate to the importation of goods into the United States from Morocco. On June 29, 2007, CBP published CBP Dec. 07–51 in the **Federal Register** (72 FR 35647), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the MFTA. In order to provide transparency and facilitate their use, the majority of the MFTA implementing regulations set forth in CBP Dec. 07–51 were included within new subpart M in part 10 of title 19 of the Code of Federal Regulations (19 CFR subpart M, part 10). However, in those cases in which MFTA implementation was more appropriate in the context of an existing regulatory provision, the MFTA regulatory text was incorporated in an existing part within the CBP regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on June 29, 2007, CBP Dec. 07–51 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on August 28, 2007. No comments were received in response to the solicitation of public comments in CBP Dec. 07–51.

Changes to the Regulations

The final rulemaking text set forth below incorporates certain changes, as discussed below, which CBP believes are necessary based on further internal review of the interim regulatory text.

Definition of ''New or Different Article of Commerce''

The words ''new or different article of commerce'' are defined in § 10.769(i) of the interim regulations as a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. This definition has been revised in this final rule document to provide that such an article of commerce ''exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of'' the CBP regulations (19 CFR 102.1 through 102.21). CBP believes that this revised definition is more transparent and is consistent with letters of understanding exchanged between the Parties which provide that, in determining whether a good meets the definition of a ''new or different article of commerce,'' the United States and Morocco should be guided by the provisions of Part 102 of the CBP regulations.

CBP also notes that this revised definition is identical to the definition of the same term set forth in the interim regulations implementing the United States-Bahrain Free Trade Agreement (''BFTA'') (*see* § 10.809(i), CBP regulations (19 CFR 10.809(i)). The rules of origin set forth in the BFTA (including letters of understanding exchanged between the Parties concerning the interpretation of ''new or different article of commerce'') closely parallel those in the MFTA.

Other Changes

1. In § 10.761, relating to the scope of Subpart M, the last sentence has been revised to add Part 102 as one of the parts in the CBP regulations that include amendments implementing the MFTA, consistent with the revision to the definition of ''new or different article of commerce'' in § 10.769(i) discussed above;

2. In § 10.769, the definition of ''substantially transformed'' (formerly paragraph (o)) has been removed as those words are no longer used in Subpart M as a result of the revision of the definition of ''new or different article of commerce'' discussed above;

3. In § 10.770, which sets forth the basic MFTA rules of origin, paragraph (a)(2) has been revised to add the words '', as defined in § 10.769(i) of this subpart,'' immediately following the words ''new or different article of commerce'' for clarification purposes;

4. Section 10.785, which concerns verifications conducted in Morocco by Moroccan authorities (at the request of CBP) relating to textile and apparel goods imported into the United States, has been removed in its entirety. CBP believes that the provisions of § 10.785 are unnecessary to the proper implementation of the MFTA as they relate primarily to actions that the Government of Morocco and CBP may take in connection with verifications performed in Morocco. As such, these provisions impose no requirements on U.S. importers of textile or apparel goods or other members of the trade. In addition, CBP notes that the removal of § 10.785 provides consistency between the MFTA implementing regulations and the interim regulations implementing the BFTA, which include no provisions regarding verifications in Bahrain of U.S. imports of textile and apparel products. The verification provisions in the MFTA closely parallel those in the BFTA;

5. As a result of the removal of § 10.785, discussed above, §§ 10.786 through 10.788 of the interim regulatory text have been re-designated as §§ 10.785 through 10.787, respectively; and

6. In § 102.0, relating to the scope of part 102, the third sentence has been revised by adding the words ''§ 10.769 of the United States-Morocco Free Trade Agreement regulations and'' immediately following the words ''new or different article of commerce under'', consistent with the revision of the definition of ''new or different article of commerce'' discussed above.

Conclusion

Accordingly, based on the considerations discussed above, CBP believes that the interim regulations published as CBP Dec. 07–51, should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 07–51 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to § 553(a)(1) of the Administrative Procedure Act. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in this final rule has previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117.

The collections of information in these regulations are in §§ 10.703 and 10.704. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the

MFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the MFTA and the Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or record keeper. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ Accordingly, the interim rule amending parts 10, 162, 163, and 178 of the CBP regulations (19 CFR parts 10, 162, 163, and 178), which was published at 72 FR 35647 on June 29, 2007, is adopted as a final rule with certain changes as discussed above and as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for Part 10 and the specific authority for Subpart M continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.761 through 10.787 also issued under Public Law 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note).

* * * * *

■ 2. Section 10.761 is amended by revising the last sentence to read as follows:

§ 10.761 Scope.

* * * Additional provisions implementing certain aspects of the MFTA and the Act are contained in Parts 102, 162, and 163 of this chapter.

■ 3. Section 10.769 is amended by revising paragraph (i) and removing paragraph (o). Revised paragraph (i) reads as follows:

§ 10.769 Definitions.

* * * * *

(i) *New or different article of commerce.* A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this chapter;

* * * * *

§ 10.770 [Amended]

■ 4. Section 10.770 is amended by adding the words '', as defined in § 10.769(i) of this subpart,'' immediately following the words ''new or different article of commerce'' in paragraph (a)(2).

§ 10.785 [Removed]

■ 5. Section 10.785 is removed.

§§ 10.786 through 10.788 [Redesignated as §§ 10.785 through 10.787]

■ 6. Sections 10.786 through 10.788 are redesignated as §§ 10.785 through 10.787, respectively.

PART 102—RULES OF ORIGIN

■ 7. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

■ 8. Section 102.0 is amended by revising the third sentence to read as follows:

§ 102.0 Scope.

* * * The rules set forth in §§ 102.1 through 102.21 of this part will also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations.* * *

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

Approved: July 31, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–17968 Filed 8–4–08; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 08–1589]

Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) responds to requests for guidance concerning the transferability of Commission certification of Internet-based TRS providers as eligible for compensation from the Interstate TRS Fund (Fund). The Bureau clarifies that such certification is not transferable.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (800) 311–4381 (voice), (202) 418–0431 (TTY), or e-mail at *Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 08–1589, released July 3, 2008 in CG Docket No. 03–123. The full text of document DA 08–1589 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 08–1589 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at

Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 08–1589 also can be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders*.

Synopsis

There are several forms of TRS, including three that are Internet-based TRS: Video Relay Service (VRS), Internet Protocol (IP) Relay (IP Relay), and IP captioned telephone service (IP CTS). The Bureau has received requests for guidance concerning the transferability of Commission certification of Internet-based TRS providers as eligible for compensation from the Fund, pursuant to the provider certification rules contained in 47 CFR 64.606 (as redesignated at 73 FR 21259, Apr. 21, 2008). The Bureau clarifies that such certification is not transferable. Therefore, in the event that an entity *not* certified pursuant to 47 CFR 64.606 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider must be certified under 47 CFR 64.606 (or otherwise eligible for compensation from the Fund) before it can receive payments from the Fund. Because the Commission certifies providers based on the attestations of their owners or their representatives, who are ultimately responsible for compliance with the Commission's rules, the certification of a provider does not automatically transfer to new owners.

On the other hand, if an entity that *is* certified pursuant to 47 CFR 64.606 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider need only notify the Commission of the change in its TRS program and provision of service within 60 days pursuant to 47 CFR 64.606(f)(2). Under this rule, the acquiring or surviving company must notify the Commission of the changes to its program and provision of service that result from the acquisition and ''must certify that the interstate TRS provider continues to meet federal minimum standards.'' To meet the latter requirement, the provider may either certify that the responses provided in its initial certification application upon which the Commission based certification remain accurate, or describe any changes and certify their compliance with the Commission's rules.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E8–17919 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 08–0137]

RIN 2127–AK36

Federal Motor Vehicle Safety Standards, Child Restraint Systems

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

ACTION: Final rule.

SUMMARY: This final rule amends a provision in Federal Motor Vehicle Safety Standard (FMVSS) No. 213 that specifies that child restraints manufactured on or after August 1, 2008 are tested by NHTSA with the Hybrid III version of the 6-year-old child dummy. NHTSA is postponing the August 1, 2008 date to August 1, 2010. The August 1, 2010 date provides NHTSA time to consider comments on seating procedures proposed earlier this year for the dummy and to complete an evaluation of technical issues relating to the use of the Hybrid III dummy in FMVSS No. 213, and provides the public more time to become experienced with testing with the dummy. As a result of this final rule, FMVSS No. 213 will permit, at the manufacturer's option, the use of either the Hybrid II or Hybrid III 6-year-old dummy in compliance tests of child restraints manufactured on or before August 1, 2010. Child restraints manufactured on or after August 1, 2010 will be tested with the Hybrid III 6-year-old child test dummy.

DATES: If you wish to petition for reconsideration of this rule, your petition must be received by September 19, 2008.

Effective date: This final rule is effective August 5, 2008.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Shashi Kuppa, PhD, Office of Rulemaking (Telephone: 202–366–1740) (Fax: 202–493–2990). For legal issues, you may call Deirdre Fujita, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This final rule amends S7.1.3 of FMVSS No. 213 to permit, at the manufacturer's option, the use of either the Hybrid II or Hybrid III 6-year-old dummy in compliance tests of child restraints manufactured before August 1, 2010. A notice of proposed rulemaking preceding this final rule was published January 23, 2008 (73 FR 3901, Docket No. 2007–0048).

Background

On July 28, 2005, NHTSA issued an interim final rule (70 FR 44520) that amended a provision in FMVSS No. 213 that had specified that child restraints [1] manufactured on or after August 1, 2005 would be subject to compliance testing with a Hybrid III 6-year-old child test dummy (August 3, 2005, Docket No. 05–22010). The Hybrid III 6-year-old child test dummy is specified in 49 CFR part 572, subpart N. The agency had incorporated the Hybrid III test dummy in FMVSS No. 213 to replace its Hybrid II counterpart believing that the Hybrid III test dummy's enhanced biofidelity and extensive instrumentation would lead to a more thorough and precise assessment of child restraint performance over that resulting from the Hybrid II dummy. However, a child

[1] These child restraints are recommended by their manufacturer for children weighing over 18 kilograms (40 pounds (lb)) or whose height is greater than 1100 millimeters.

restraint manufacturer (Dorel Juvenile Group (Dorel)) asked to delay the compliance date for the mandatory use of the Hybrid III dummy because of unexpectedly high Head Injury Criterion (HIC) measurements Dorel found when it tested its booster seats with the Hybrid III dummy. In the interim final rule, the agency agreed that the August 2005 date should be postponed to August 1, 2008 to provide more time to work with the dummy and make needed adjustments to child restraints to enable them to meet FMVSS No. 213 performance criteria.

Supplemental Notice

Following publication of the interim final rule, NHTSA developed FMVSS No. 213 test dummy seating procedures that could be used with Hybrid III test dummies in belt-positioning booster seats to better control variability of HIC measurements obtained by the test dummy. Seating procedures were developed and proposed for the Hybrid III 10-year-old and Hybrid III 6-year-old child test dummies in a supplemental notice of proposed rulemaking (SNPRM) published January 23, 2008 (73 FR 3901, Docket No. 2007–0048).[2] The agency determined that a dummy that is set up to have a more reclined torso is more likely to submarine under the vehicle belt than a dummy that is more upright and well restrained, resulting in higher rotational velocity in the dummy's head and a non-representative contact of the head with a relatively rigid portion of the dummy structure as compared to a test with the dummy in a more upright position. Thus, because dummy posture in booster seats was found to affect HIC measurements obtained by the dummy, the agency proposed a high degree of specificity in the dummy set-up procedure. Comments were requested on the proposed seating procedure for testing booster seats with the Hybrid III 6-year-old dummy and on the need for the procedure for testing child restraints other than booster seats. 73 FR at 3909. In addition, because the August 1, 2008 date that had been adopted by the interim final rule was approaching while issues related to the proposed seating procedure for the Hybrid III 6-year-old dummy were still under consideration, the SNPRM proposed to postpone the August 1, 2008 date for mandatory use of the dummy until August 1, 2010.

In commenting on the issue of the proposed August 1, 2010 compliance date in the SNPRM, the Juvenile Products Manufacturers Association Inc. (JPMA) stated that its child restraint manufacturer members supported the proposed postponement of the August 1, 2008 date to August 1, 2010. JPMA believed that testing with the Hybrid III 6-year-old child test dummy ''continue[s] to provide erroneous results'' and that ''changes to address the design and performance issues have not been implemented to date.'' (JPMA did not elaborate on its reference to ''design and performance issues'' of the dummy.) Dorel commented also, indicating concurrence with the JPMA comment and concerns about the ''non-biofidelic behavior of the Hybrid 3 6yr dummy.'' No comment opposed the postponement of the August 1, 2008 date.

Decision

For the reasons stated in the SNPRM and after consideration of the comments on the proposed postponement of the August 1, 2008 date, NHTSA has decided to adopt the proposed amendment of S7.1.3 of FMVSS No. 213. The amendment allows, at the manufacturer's option, the use of either the Hybrid II or Hybrid III 6-year-old test dummy in compliance tests of child restraints manufactured before August 1, 2010. The extended time for optional use of the Hybrid III dummy provides NHTSA time to consider comments on the proposed seating procedure of the SNPRM for the dummy and provides the public more time to become experienced testing with the dummy.

The extended time period also provides the agency a window of opportunity to complete an evaluation of two minor changes to the Hybrid III dummy's design before the effective date for the mandatory use of the dummy in agency compliance tests. The first change relates to a petition for rulemaking submitted by test dummy manufacturers First Technology Safety Systems, Inc. and Denton ATD to correct an error in the drawing package incorporated by reference into 49 CFR part 572 for the abdominal insert for the dummy. These dummy manufacturers believe that the drawing for the abdominal insert does not match the mold used to manufacture the abdomen inserts in the dummies and should therefore be corrected.

The second change relates to the femur design of the Hybrid III 6-year-old child dummy. When using the dummy in FMVSS No. 213 tests and in vehicle crash tests conducted under NHTSA's consumer information New Car Assessment Program, the agency observed failures of the femur involving complete separation of the dummy leg(s) from the pelvis. Failures occurred across a variety of test facilities and test conditions and also when testing a variety of child restraints, while the failure mode appeared the same for all cases. Failure appears to have occurred at a sharp corner between two sections of the machined femur: The larger section that clamps onto the upper leg and the smaller section that contains the femur shaft. Fracturing of this area has caused the complete separation of the machined femur. NHTSA is initiating rulemaking to propose a femur design for the dummy that would enable the femur to withstand the stresses of dynamic testing without failure. Postponement of NHTSA's mandatory use of the Hybrid III 6-year-old child dummy until August 1, 2010 will provide the agency time to address the dummy's abdomen drawing and femur design prior to use of the dummy in FMVSS No. 213 compliance tests.

The January 23, 2008 SNPRM and August 31, 2005 NPRM addressed many issues other than the August 1, 2010 date for testing with the Hybrid III 6-year-old dummy. NHTSA will address these other issues in a subsequent document.

Regulatory Analyses and Notices

Executive Order, 12866 Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers, and only extends the compliance date for certification to testing with the Hybrid III 6-year-old test dummy. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact

[2] The SNPRM supplemented an August 31, 2005 notice of proposed rulemaking (NPRM) that proposed to expand the applicability of FMVSS No. 213 to restraints recommended for children up to 80 lb and to require booster seats and other restraints to meet performance criteria when tested with the Hybrid III 10-year-old child test dummy (70 FR 51720; NHTSA Docket No. 21245).

upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This final rule affects child restraint manufacturers. According to the size standards of the Small Business Association (at 13 CFR Part 121.601), the small business size standard for manufacturers of ''Motor Vehicle Seating and Interior Trim Manufacturing'' (NAICS Code 336360) is 500 employees or fewer. Many child restraint manufacturers would be classified as small businesses under this standard. However, the final rule does not impose any new requirements on manufacturers that produce child restraint systems, but only extends a compliance date. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

Executive Order 13132, Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

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. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a state, or political subdivision of a state, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

Privacy Act

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

Environmental Impacts

We have considered the impacts of this final rule under the National Environmental Policy Act. This rulemaking action only extends the compliance date for certification of child restraint systems using the Hybrid III 6-year-old test dummy. This rulemaking does not require any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.213 is amended by revising S7.1.3 to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S7.1.3 Voluntary use of alternative dummies. At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), with regard to testing a child restraint manufactured before August 1, 2010, when this section specifies use of the 49 CFR part 572, subpart N (Hybrid III 6-year-old dummy) test dummy, the test dummy specified in 49 CFR part 572, subpart I (Hybrid II 6-year-old dummy) may be used in place of the subpart N test dummy.

Issued: July 31, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. E8–17932 Filed 7–31–08:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780–8013–02]

RIN 0648–XJ51

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Scallop Access Area to Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Nantucket Lightship Scallop Access Area (NLCA) to scallop vessels until June 15, 2010. This closure is based on a determination by the Northeast Regional Administrator (RA) that scallop vessels will have caught the yellowtail flounder (yellowtail) total allowable catch (TAC) for the NLCA on August 3, 2008. Effective 0001 hours, August 4, 2008, vessels may not fish for scallops in the NLCA. Vessels on a NLCA scallop trip at the time of this announcement must leave the NLCA prior to 0001 hour, August 4, 2008. This action is being taken to prevent the scallop fleet from exceeding the yellowtail TAC allocated to the NLCA for the 2008 scallop fishing year in accordance with the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the NLCA to all scallop vessels is effective 0001 hr local time, August 4, 2008, until June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Commercial scallop vessels fishing in access areas are allocated 9.8 percent of the annual yellowtail TACs established in the (NE) Multispecies FMP. Given current fishing effort by scallop vessels in the NLCA, the RA has made a determination that the NLCA yellowtail TAC of 67,409 lb (30.58 mt) is projected to be caught on August 3, 2008. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** notice notifies scallop vessel owners that, effective 0001 hours on August 4, 2008, federally permitted scallop vessels are prohibited from declaring or initiating a trip into the NLCA until June 15, 2010.

If a vessel with a limited access scallop permit has an unused trip(s) into the NLCA, it will be allocated 7.7 additional open areas days-at-sea (DAS) for each unused trip. If a vessel has been allocated a broken trip compensation trip that cannot be made, it will be allocated prorated open area DAS based on the remaining allocation and the above listed access area DAS conversion rate. For example, if a full-time vessel had an unused 9,000–lb NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vesselwould be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip). A separate letter will be sent to notify vessel owners of their allocations for unused trips in the NLCA.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Due to the need to take immediate action to close the NLCA once the yellowtail TAC has been taken, pursuant to 5 U.S.C. 553(b)(3) proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. The NLCA opened for the 2008 fishing year on June 15, 2008. Data indicating the scallop fleet has taken, or is projected to take, all of the NLCA yellowtail TAC have only recently become available. To allow scallop vessels to continue to take trips in the NLCA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking more yellowtail than allocated to the scallop fleet. Excessive yellowtail harvest from the NLCA would result in excessive fishing effort on the Southern New England/Mid-Atlantic yellowtail stock, where tight effort controls are critical for the rebuilding program. Should excessive fishing effort occur, future management measures may need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rule making is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–17947 Filed 7–31–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 151
Tuesday, August 5, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2007–0007]

RIN 0584–AD65

School Food Safety Program Based on Hazard Analysis and Critical Control Point Principles

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: The Child Nutrition and WIC Reauthorization Act of 2004 requires school food authorities participating in the National School Lunch Program (NSLP) or the School Breakfast Program (SBP) to implement a school food safety program for the preparation and service of school meals served to children. The school food safety program must comply with the hazard analysis and critical control point (HACCP) system established by the Secretary of Agriculture. This proposal would enable schools to take systematic action to prevent or minimize the risk of foodborne illness in the NSLP and SBP.

DATES: Comments must be received on or before September 19, 2008 to be assured of consideration.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Preferred method; follow the online instructions for submitting comments on docket FNS–2007–0007.
- *Fax: Submit comments by facsimile transmission to:* (703) 305–2879, attention Robert Eadie.
- *Mail:* Comments should be addressed to Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

All submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Wagoner or Marisol Benesch at the above address or by telephone at 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by adding the requirement that school food authorities (SFAs) implement a food safety program at each food preparation and service facility participating in the NSLP or the SBP. The food safety program, which became a requirement in the school year beginning July 1, 2005, must be based on the HACCP system established by the Secretary of Agriculture.

HACCP is a food safety management system that focuses on the control of biological, chemical and physical hazards in food and food preparation practices. Through a HACCP-based food safety program, schools can identify potential food hazards, identify critical points where hazards can be controlled or minimized using control measures, and develop monitoring procedures to determine if the hazards identified are being effectively controlled.

This proposed rule is consistent with the seven HACCP principles that were updated by the 1997 National Advisory Committee for Microbiological Criteria for Foods. The HACCP principles are:

1. Perform a hazard analysis.
2. Decide on critical control points (CCPs).
3. Determine critical limits.
4. Establish procedures to monitor CCPs.
5. Establish corrective actions.
6. Establish verification procedures.
7. Establish a record keeping system.

In 2003, the Food and Drug Administration (FDA) developed the Process Approach to HACCP principles for use in retail food establishments. The Process Approach simplified the traditional HACCP procedures by grouping foods according to preparation process and using the same safety procedures for each menu item within a group, instead of developing a HACCP plan for each item.

This proposed rule seeks to formally establish the requirements for a school food safety program based on HACCP principles. Implementation of this proposal would codify the requirements in the ''Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles.'' The Guidance was issued in June 2005, pursuant to authority in section 501(a) of Public Law 108–265, to provide school food authorities immediate and practical help to implement a HACCP-based food safety program in the school year beginning July 1, 2005. The Guidance continues in effect during this rulemaking and we expect that the HACCP-based food safety programs established will remain in place, based on the requirements of Public Law 108–265.

The Guidance was developed with input from representatives from the Food Safety and Inspection Service, FDA, National Food Service Management Institute (NFSMI), Centers for Disease Control and Prevention, School Nutrition Association, National Environmental Health Association, State and local public health agencies, and State education agencies, including school food service directors. It is available at the FNS Web site, *http://www.fns.usda.gov/cnd*, under the headings ''Guidance'' and ''School Food Safety.''

Prior to the amendment to section 9(h) of the NSLA by section 111 of Public Law 108–265, there was no

specific requirement for a food safety program of this kind in the NSLP or SBP. Schools have maintained a good food safety record by monitoring food temperatures during refrigeration, cooking, and other operational steps as required by State and local laws public health standards. In recent years, however, the public, media, and Congress have placed more emphasis on protecting children from foodborne illnesses. The school meal programs are the first segment of retail food service operations required by Federal law to implement a food safety program based on HACCP principles.

II. The Importance of HACCP in Schools

More than 100,000 schools participate in the NSLP and SBP and serve over 36 million breakfasts and lunches daily. Most of these schools follow basic food safety procedures and reports of foodborne illness in the school meal programs are few compared to the millions of school meals served daily. Although schools are generally safe places for children to eat, it is important that all schools follow food safety practices consistently and systematically. Reports issued by FDA in 2000 [1] and 2004 [2] showed that improper holding/time and temperatures and inadequate personal hygiene are foodborne illness risk factors in a number of elementary schools.

As recognized by the 2005 ''Dietary Guidelines for Americans,'' food safety is a vital aspect of healthy eating. There is concern for school food safety because large numbers of children could be affected if foodborne illness occurs in schools. Schools also feed many young children, a population group that is at a higher risk of becoming seriously ill or dying from foodborne illnesses. Furthermore, foodborne illness outbreaks have an effect on families and communities in terms of medical costs and losses in productivity.[3] Obviously, public confidence and student participation in the school meal programs also would be affected.

Congress demonstrated its concern regarding food safety in the school meal programs in two ways in Public Law 108–265. First, it increased the number of inspections by State or local food safety agencies that SFAs must obtain, required public notification of the reports of such inspections, and required State and Federal audits to assure that the inspections are obtained. These requirements were implemented in an interim rule published in the **Federal Register** on June 15, 2005. Second, the legislation mandates that SFAs implement HACCP-based food safety programs and establishes technical assistance and training related to HACCP to help SFAs in these efforts. The legislation strikes a balance which recognizes and supports the traditional role of State and local food safety agencies in assuring compliance with food safety standards, while encouraging SFAs to maintain highly effective food safety practices through HACCP-based programs with technical assistance and training from the Federal level.

It is important to note that the legislation does not create new food safety responsibilities for State educational agencies or for FNS. The role of the State educational agencies and FNS is to ensure that SFAs obtain the required State or local food safety inspections, that SFAs implement HACCP-based food safety programs, and that SFAs have technical assistance and training available. None of these roles is intended to duplicate or interfere in any way with the responsibilities of the State and local food public health agencies.

HACCP focuses school food safety efforts on prevention, since it is designed to avoid problems and detect and correct unsafe conditions before a meal is served. The HACCP requirement complements current NSLP efforts, such as the School Meals Initiative, aimed at improving the quality of meals served to millions of school children daily.

III. The ''Process Approach'' to HACCP

This proposal and the Guidance issued by FNS to help SFAs develop a school food safety program are based on the Process Approach to HACCP, a modified version of traditional HACCP. The Process Approach was developed by FDA for retail food service settings such as restaurants. FNS further adapted FDA's Process Approach specifically for school food service operations.

The Process Approach to HACCP classifies menu items into three broad categories. These categories, listed below, are based on whether or not a menu item takes a complete trip through the temperature danger zone (41 °F to 135 °F) during preparation and service and how many times it does so. The way that a particular menu item is handled at each food preparation or service facility will determine the category for the menu item.

- *Process I: No Cook Step*—No cooking is involved, so the menu item does not make a complete trip through the temperature danger zone.
- *Process II: Same Day Service*—The menu item takes one complete trip through the temperature danger zone (during cooking) and is served.
- *Process III: Complex Food Preparation*—The menu item goes through both cooking and cooling, and possibly reheating, taking two or more complete trips through the temperature danger zone.

The Process Approach makes it easier to apply HACCP principles in school food service operations. Under the Process Approach, it is not necessary to conduct a hazard analysis for each menu item. All menu items in a process category share similar types of hazards and require the same control measures. In addition, the critical control points for all the menu items in a category are easily identified. For example, all menu items in Process 2 require proper cooking and hot holding to prevent or eliminate biological hazards.

Another advantage of the Process Approach is that it meets the needs of the individual food service operations. The Process Approach works in central kitchens, satellite sites, service-only sites, and on-site preparation facilities.

The Process Approach to HACCP is a simpler method for school food service operations than traditional HACCP. However, this proposal would allow SFAs that currently have a food safety program based on traditional HACCP to retain their program after consultation with the State Agency (SA) to ensure that the program meets all the elements described in this proposal.

IV. Resources for Schools

FNS recognizes while most SFAs already follow HACCP principles, others require assistance to implement this type of food safety management system. One resource for SFAs and SAs is the Guidance we distributed in June 2005 to help each SFA develop a practical food safety program that meets the needs and capabilities of sites under its jurisdiction. The Guidance provides simple instructions for developing a HACCP-based food safety program, and includes many examples of Standard Operating Procedures (SOPs) and

[1] ''FDA Retail Food Program Database of Foodborne Illness Risk Factors'', U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, August 10, 2000.

[2] ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004)'', U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, September 14, 2004.

[3] In 2000, the Economic Research Service estimated human illness costs for five bacterial pathogens: *Campylobacter, Salmonella* (nontyphoidal serotypes only), E. coli 0157 and non-0157 STEC, and *Listeria monocytogenes*. *http://www.ers.usda.gov/Emphases/SafeFood/*.

prototype recordkeeping forms. SFAs can consult the Guidance for ideas on SOPs and recordkeeping forms for their operation and may use the sample forms provided in the Guidance, create new forms or modify existing ones, if necessary.

We expect that as SFAs and food service workers gain experience and become comfortable with their food safety program, obstacles to accomplishing monitoring and recordkeeping tasks will gradually diminish. We encourage SAs and SFAs to take advantage of the training and educational resources available from NFSMI. Section 125 of Public Law 108–265 amended section 21(c)(2)(B) of the NSLA (42 U.S.C. 1769b(c)(2)(B)), adding to the duties of the NFSMI the responsibility to provide training and technical assistance to SAs and SFAs on HACCP, among other food safety issues. The NFSMI Help Desk is also available to provide general information on food safety and HACCP (800–321–3054, 8 a.m.–5 p.m., central time).

V. Roles and Responsibilities

Section 9(h) of the NSLA requires each SFA to implement a food safety program that complies with the Secretary's HACCP principles for each meal served as part of the NSLP or SBP. This proposal would require each SFA to develop a program for each food preparation and service facility under its jurisdiction. As stated in § 210.13(c) of this proposal, the food safety program would include SOPs and be based on HACCP principles, which can be applied more easily by following the Process Approach. Since hazard analysis and control measures are built into the Process Approach, an SFA would primarily have to establish procedures (if none currently exist) to monitor and record time and temperature at operational steps designated as critical control points (refrigeration, cooking, cooling, reheating, and holding).

Because each school food service operation is unique and they vary widely in complexity, the SFA would have to determine what critical control points need to be monitored and recorded, how to document them, who will do so and how frequently. Records such as temperature logs and written SOPs would be necessary to demonstrate that a food safety program is in place.

We would strongly encourage food service operations to use existing records to document control measures and corrective actions. While records must be accurate, they need not be elaborate. Prototype forms provided in the Guidance are optional and may be used or adapted at the discretion of the SFA.

Section 210.15(b)(5) of this proposal would require that documentation be kept for two years, the current one and the prior school year. As stated in § 210.18(h)(6) of this proposal, food safety records would be examined during program reviews, such as the Coordinated Review Effort.

In addition, § 210.18(h)(6) of this proposal would require an SFA to conduct periodic reviews at each food preparation and service facility to verify that control measures, corrective action, and recordkeeping are being performed regularly and in accordance with the SFA's written program. This review could be done in conjunction with the annual on-site review conducted under § 210.8(a)(1).

This proposal would not require SFAs to seek outside sources to conduct periodic reviews or to assess the validity of the food safety program. SFAs have discretion to seek help from any State or local food safety professional (*e.g.*, health inspector) who has a thorough understanding of HACCP to assist with the reviews or assessments and other activities such as staff training. Neither section 111 of Public Law 108–265 nor this proposal require State or local public health agencies to develop, monitor, or validate the school food safety programs. However, FNS anticipates that those agencies will be available, as their resources permit, to assist SFAs and schools with their food safety efforts.

Primary responsibility for the implementation of the food safety program at each school would rest on the food service or cafeteria manager; however, the success of the program is largely determined by the employees. Therefore, it is important that employees, including temporary help, be aware of the importance of following the complete food safety program.

As with any program question, SFAs should go to their SA for clarification or assistance with food safety.

SAs would be expected to provide technical assistance and training to their SFAs to facilitate compliance with this requirement, in accordance with existing §§ 210.19(a)(4) and 220.13(f)(1) and new § 210.18(h)(6) of this proposal. This could be accomplished through collaboration with various sources, including NFSMI and contractors. SAs would confirm implementation of the food safety program through administrative reviews, SMI evaluations and other means. If an SFA only participates in the SBP, the SA would still be required to confirm compliance with this rule as stated in current § 220.13(k) and § 220.7(a)(3) of this proposal.

It is important to note that satisfactory implementation of the HACCP-based food safety program would not exempt schools from obtaining two food safety inspections per school year, which is a requirement in § 210.13(b) established through another amendment to section 9(h) of the NSLA by section 111 of Public Law 108–265 and its implementing interim rule (70 FR 34627) published on June 15, 2005. These two independent, but related, requirements work together to help ensure the delivery of safe foods to children in the school meal programs.

VI. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This proposal is needed to codify the statutory requirement that SFAs participating in the NSLP and the SBP develop HACCP-based food safety programs for the preparation and service of school meals.

Benefits

Implementing HACCP-based food safety programs in schools would enable schools to take a systematic approach to food safety and reduce the risk of foodborne illnesses in the school meals programs serving over 30 million children nationwide.

Costs

The Regulatory Impact Analysis estimates the total cost associated with implementing a HACCP-based food safety program at $42.5 million in the first year of implementation. FNS expects that the subsequent annual costs associated with this proposal would decline as one-time program development efforts are completed, with 5-year costs totaling $99.3 million (in 2006 dollars, discounted at a 7% rate).

Regulatory Flexibility Act

This proposal has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would require SFAs to implement a HACCP-based food safety program in each of the food preparation and service facilities under their jurisdiction. Existing program regulations under § 210.13(a)

require that SFAs follow proper sanitation and health standards established under State and local law. Some SFAs already follow HACCP principles or have SOPs, which are elements of the proposed school food safety program. FNS and NFSMI provide technical assistance and training programs which would help SFAs implement the proposed food safety program. For these reasons, this proposal does not impose a significant economic impact on small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. Although the food safety program in this proposal entails training and recordkeeping costs, this rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of UMRA.

Executive Order 12372

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555, and the School Breakfast Program is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State and Local Officials

Shortly after passage of the Child Nutrition and WIC Reauthorization Act of 2004, FNS met with officials from State education agencies to discuss the new school food safety requirements and to hear their concerns. FNS also solicited input from the Food Safety and Inspection Service, Food and Drug Administration, National Food Service Management Institute, Centers for Disease Control and Prevention, School Nutrition Association, National Environmental Health Association, State and local public health agencies, and State education agencies, including school food service directors, to develop the HACCP guidance as authorized by Title V of the Child Nutrition and WIC Reauthorization Act of 2004. This proposal takes into account the stakeholders' concerns.

Nature of Concerns and Need To Issue This Rule

Some State and local officials raised concerns that school food service personnel may lack the expertise and time to properly implement a HACCP-based food safety program. Others expressed concern that the proposed requirement will increase the workload of school foodservice personnel. The HACCP-based food safety program is a non-discretionary requirement established by the Child Nutrition and WIC Reauthorization Act of 2004 that requires the use of procedures that are generally regarded as essential in institutional food service operations. To address the stakeholders' concerns, FNS offered schools the Process Approach to HACCP, which is an easier method to apply HACCP principles than those normally used in a retail food service operation. FNS adapted the Process Approach to HACCP to specifically fit the school food service operation.

Extent to Which FNS Meets Those Concerns

FNS issued a guidance document on June 10, 2005 to help SFAs implement a school food safety program based on HACCP principles. The guidance document provides step-by-step instructions for implementing the food safety program, and includes a sample plan and prototype recordkeeping forms. In addition, the National Food Service Management Institute, which was statutorily established as a resource for SFAs and others, developed a nationwide training programs and technical assistance materials to help State agencies assist their SFAs in implementing the HACCP-based food safety program. FNS will assess the need for additional training and technical assistance resources as we learn about program experience at the State and local levels.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published final, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the final rule when published. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the NSLP and SBP.

Paperwork Reduction Act

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

Comments must be received by October 6, 2008.

Comments may be sent to Office of Information and Regulatory Affairs, OMB, Attention—Desk Officer for FNS,

either by fax to 202–395–6974 or by e-mail to *OIRA_submission@omb.eop.gov*. Please also send a copy of your comments or requests for information to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302. FNS may make the comments publicly available by posting them on *http://www.regulations.gov*.

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

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

Title: 7 CFR 210, National School Lunch Program.

OMB Number: 0584–0006.

Expiration Date: 03/31/2009.

Type of Request: Revision of currently approved information collection.

Abstract: Public Law 108–265; June 30, 2004, amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by adding the requirement that school food authorities (SFAs) implement a food safety program at each food preparation and service facility participating in the National School Lunch Program (NSLP) or School Breakfast Program (SBP). The food safety program must be based on the Hazard Analysis Critical Control Point (HACCP) system established by the Secretary of Agriculture and implemented in the school year 2005–2006. Through a HACCP-based food safety program, schools can identify potential food hazards, identify critical points where hazards can be controlled or minimized using control measures, and develop monitoring procedures to determine if the hazards identified are being effectively controlled.

ESTIMATED ANNUAL BURDEN

Reporting	Section	Number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agency confirms that each school food authority has a food safety program based on HACCP principles. New Burden.	7 CFR 210.18(h)(6) ...	57	61	1	3,477
SFA implements a food safety program based on HACCP principles for each food preparation and service facility under its jurisdiction. New burden.	7 CFR 210.13(c)	20,710	1	76	1,573,960
Total New Reporting	.....	.....	.....	.....	1,577,437
Recordkeeping	**Section**	**Annual number of respondents**	**Annual frequency**	**Average burden per response**	**Annual burden hour**
Schools maintain records from food safety program. New Burden.	7 CFR 210.15(b)(5) ...	100,398	180	.02	361,433
Total New Recordkeeping	.....	.....	.....	.....	361,433
Total Burden Requested	.....	.....	.....	.....	1,938,870

Those respondents participating in the School Breakfast Program also participate in the National School Lunch Program, thus the burden associated with the School Breakfast Program will be carried in the National School Lunch Program.

Estimated Number of Respondents: 121,165.

Estimated Number of Responses per Respondent: 149.

Estimated Hours per Response: .1.

Estimated Total Annual Burden: 1,938,870.

E-Government Act

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

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs-health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

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

Accordingly, 7 CFR parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.9, revise paragraph (b)(14) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements of § 210.13;

* * * * *

3. In § 210.13, redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 210.13 Facilities management.

* * * * *

(c) *Food safety program*. The school food authority must develop a written food safety program for each of its food preparation and service facilities that meets the requirements in paragraph (c)(1) or paragraph (c)(2) of this section.

(1) A school food authority with a food safety program based on traditional hazard analysis and critical control point (HACCP) principles must:

(i) Perform a hazard analysis;

(ii) Decide on critical control points;

(iii) Determine the critical limits;

(iv) Establish procedures to monitor critical control points;

(v) Establish corrective actions;

(vi) Establish verification procedures; and

(vii) Establish a recordkeeping system.

(2) A school food authority with a food safety program based on the process approach to HACCP must ensure that its program includes:

(i) Standard operating procedures to provide a food safety foundation;

(ii) Menu items grouped according to process categories;

(iii) Critical control points and critical limits;

(iv) Monitoring procedures;

(v) Corrective action procedures;

(vi) Recordkeeping procedures; and

(vii) Periodic program review and revision.

* * * * *

4. In § 210.15,

a. Revise the introductory text in paragraph (b); and

b. Revise paragraph (b)(5).

The revisions read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) *Recordkeeping summary*. In order to participate in the Program, a school food authority or a school, as applicable, must maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

* * * * *

(5) Records from the food safety program for the current and prior school year to demonstrate compliance with § 210.13(c), and records from the most recent food safety inspection to demonstrate compliance with § 210.13(b).

5. In § 210.18, add a new paragraph (h)(6) to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(h) * * *

(6) *Food safety*. The State Agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of § 210.13.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

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

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

2. In § 220.7:

a. Add a new paragraph (a)(3); and

b. Revise paragraph (e)(8).

The addition and revision read as follows:

§ 220.7 Requirements for participation.

(a) * * *

(3) A school food authority must implement a food safety program meeting the requirements of part 210 of this chapter at each of the food preparation and service facilities under its jurisdiction.

* * * * *

(e) * * *

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements in paragraph (a)(2) and paragraph (a)(3) of this section;

* * * * *

Dated: July 28, 2008.

Kate Houston,

Acting Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E8–17941 Filed 8–4–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[Docket No. USCBP 2007–0111]

RIN 1505–AB97

Electronic Payment and Refund of Quarterly Harbor Maintenance Fees

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations by prescribing alternative procedures by which payers of the quarterly harbor maintenance fee (HMF) may submit their payments or refund requests to Customs and Border Protection (CBP) electronically via an Internet account established by the payer and located at *http://www.pay.gov.* CBP will continue to accept quarterly HMF payments or refund requests via mail. It is also proposed to clarify the regulations to state that each HMF quarterly payment, whether paper or electronic, must be accompanied by a CBP Form 349 (HMF Quarterly Summary Report). The changes proposed in this document are intended to provide the trade with expanded electronic payment/refund options for quarterly HMFs and to modernize and enhance CBP's port use fee collection efforts.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2007–0111.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Office of Finance, Revenue Division, Collections, Refunds and Analysis Branch, (317) 614–4511.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Harbor Maintenance Fee (HMF)

The harbor maintenance fee (HMF) was created by the Water Resources Development Act of 1986 (Pub. L.99–622, 26 U.S.C. 4461 *et seq.*). The purpose of the fee is to require those who benefit from the maintenance of U.S. ports and harbors to share in the associated costs of such maintenance. The HMF is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

Existing HMF Regulations

The HMF implementing regulations are set forth in § 24.24 of title 19 of the Code of Federal Regulations (19 CFR 24.24). Section 24.24(e) sets forth the procedures applicable to HMF collections, supplemental payments, and refunds. Generally, this provision requires accumulated HMFs to be paid on a quarterly basis by mailing a check or money order to a specified CBP address, accompanied by a CBP Form 349 (HMF Quarterly Summary Report). *See* 19 CFR 24.24(e)(1)(ii), (2)(iii), and (3)(ii). A supplemental HMF payment or refund request must be accompanied by a CBP Form 350 (HMF Amended Quarterly Summary Report), along with a copy of the CBP Form 349. *See* 19 CFR 24.24(e)(4)(i) and (iii). Section 24.24(f) provides that all quarterly payments required by this section be received no later than 31 days after the close of the quarter being paid.

Proposed Amendments to the HMF Regulations

Most of the changes proposed in this document affect 19 CFR 24.24(e) which, as noted above, sets forth the procedures applicable to HMF payments and refunds. Specifically, this document proposes new alternative procedures that would permit the electronic payment of quarterly HMFs using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.* Requests for HMF refunds may also be made through *http://www.pay.gov.* Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive refund payments via mail. As these proposed electronic procedures are voluntary, CBP will continue to accept HMF payments and refund requests sent via mail.

Pay.gov is a secure Internet payment platform provided by the Financial Management Service (FMS) for payments to federal agencies. CBP has migrated payment of certain fees and taxes to the pay.gov platform through the use of ACH debit transactions. CBP will distribute a user-guide to HMF payers that provides information regarding account set-up and related issues.

This document also proposes to clarify 19 CFR 24.24(e) to require that, for both paper and electronic payments of the quarterly HMF, a CBP Form 349 must accompany *each* HMF payment. All three provisions of the existing HMF payment regulations set forth at 19 CFR 24.24(e)(1)(ii), (2)(iii), and (3)(ii) require the payer to pay *all fees* for which he is liable *for the quarter* by *mailing a check or money order* payable to CBP *and* a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349. Based on the existing terms of these provisions, a payer is required to remit a single quarterly payment to CBP accompanied by a single CBP Form 349. In practice, however, CBP has received HMF payments by methods that do not follow the regulations. For example, CBP has received several HMF payments from a single payer for a quarter or, in the alternative, a single HMF payment that is accompanied by several CBP Form 349s. In a purely paper environment, CBP was able to process these submissions. In the context of an electronic paperless environment, however, it is proposed to require that a single CBP Form be submitted with *each* HMF payment to support the transactional requirements of *http://www.pay.gov* and to promote consistency and harmonization of HMF collection procedures.

These proposed changes, other than those involving non-substantive editorial changes, are discussed below in more detail.

Explanation of Amendments

It is proposed to amend 19 CFR 24.24 to set forth alternative expanded procedures for the electronic payment and refund of quarterly HMFs. It is also proposed to amend this section to require that each HMF quarterly payment or refund request, whether paper or electronic, be accompanied by a CBP Form 349 or 350, as appropriate.

Section 24.24(c)(8)(i)

Section 24.24(c) describes the types of commercial cargo that are exempt from the HMF. Within this provision, paragraph (c)(8)(i) specifies donated cargo that is certified by CBP as intended for use in humanitarian or development assistance overseas, including contiguous countries, as exempt from the HMF. The existing regulations direct that a request for a refund made pursuant to this provision should be made on a CBP Form 350 and sent to the Office of Finance located at CBP Headquarters in Washington, DC, along with a CBP Form 349 for each quarter for which a refund is requested and supporting evidence that establishes that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas.

It is proposed to amend this provision to clarify that HMF refund requests must be submitted to CBP on a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350, and to provide that the form may either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or it may be submitted electronically to CBP via an Internet account established by the payer and located at *http://www.pay.gov.* Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). Approved HMF refund payments will

be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

Section 24.24(e)

Section 24.24(e) sets forth the procedures applicable to HMF collections, supplemental payments and refunds. Section 24.24(e)(1)(ii) prescribes the method by which the shipper whose name appears on the Vessel Operation Report must pay the HMF for domestic vessel movements. Specifically, this provision directs that the shipper pay the accumulated fees on a quarterly basis by mailing a check or money order to CBP along with the CBP Form 349.

It is proposed to amend this provision to state that the shipper may submit the quarterly HMF payments to CBP either electronically using ACH via an Internet account established by the payer and located at *http://www.pay.gov* or by check or money order to the address specified therein. It is also proposed to clarify this provision to state that each HMF quarterly payment, whether paper or electronic, must be accompanied by a CBP Form 349.

Several other provisions within § 24.24(e) currently require the payer to submit HMF payments or refund requests on a quarterly basis by mailing a check or money order to CBP along with the CBP Form 349 or 350, as applicable.

In §§ 24.24(e)(2)(iii), 24.24(e)(3)(ii), and 24.24(e)(4)(iii), it is proposed to make changes similar to those described above to reflect that a payer may submit quarterly HMF payments to CBP either electronically using ACH via an Internet account established by the payer and located at *http://www.pay.gov* or by check or money order to the address specified therein and that each HMF payment, whether paper or electronic, must be accompanied by a CBP Form 349. Similarly, it is proposed that each HMF refund request must be submitted on a CBP Form 350 and may either be submitted to CBP electronically via an Internet account established by the payer and located at *http://www.pay.gov* or via mail. Upon request by CBP, the party requesting the refund must submit to CBP, via mail, the CBP Form 349 for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

Section 24.24(e)(4)(iv)(B)(*4*) provides that a protest may be filed for any payment not approved for a refund in a Revised Report/Certification within 90 days of the issuance of that report. As the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L.108–429, 118 Stat. 2593) extended the time to file and amend a protest from 90 days to 180 days, it is proposed to amend this provision accordingly.

Section 24.24(g)

Section 24.24(g) sets forth the recordkeeping requirements applicable to this section. This provision directs the parties responsible for the maintenance of records to provide certain contact information to the Director, Accounting Services in Accounts Receivable. It is proposed to amend this provision to reflect that this information be provided to the Director, Revenue Division.

The Regulatory Flexibility Act and Executive Order 12866

Because these proposed amendments implement alternative procedures that provide expanded electronic payment/refund options for quarterly HMFs and do not require small entities to change their business practices, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651–0055 (harbor maintenance fee). This rule does not involve any material change to the existing approved information collection. 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 assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

Amendments to the Regulations

For the reasons set forth in the preamble, part 24 of title 19 of the CFR (19 CFR part 24) is proposed to be amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

2. In § 24.24:

a. The introductory text to paragraph (c)(8) is amended by removing the words ''the U.S. Customs Service'' and adding in their place the term ''CBP'';

b. Paragraph (c)(8)(i) is revised;

c. Paragraph (c)(8)(ii) is amended by: Removing the word ''shall'' each place it appears and adding in its place the word ''must''; and removing the word ''Customs'' and adding in its place the term ''CBP'';

d. The introductory text to paragraph (d)(3) is amended by removing the word ''shall'' and adding in its place the word ''will'';

e. Paragraph (e)(1)(ii) is revised;

f. Paragraph (e)(2)(i) is amended: In the second sentence, by removing the words ''U.S. Customs'' and adding in their place the term ''CBP''; and in the third sentence, by removing the word ''shall'' and adding in its place the word ''will'';

g. Paragraph (e)(2)(ii) is amended: In the first sentence, by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP''; in the second sentence, by removing the language ''U.S. Customs Entry Summary Form (Customs'' and adding in its place ''CBP Entry Summary Form (CBP''; and in the third sentence, by removing the word ''shall'' and adding in its place the word ''must'';

h. Paragraph (e)(2)(iii) is revised;

i. Paragraph (e)(3)(ii) is revised;

j. Paragraph (e)(4)(i) is amended by removing the fourth and fifth sentences;

k. Paragraph (e)(4)(ii) is amended by removing the word ''Customs'' each place it appears and adding in its place the term ''CBP'';

l. Paragraph (e)(4)(iii) is amended by: Removing the word ''Customs'' each place it appears and adding in its place

the term ''CBP''; and adding after the last sentence the following language, ''Supplemental payments, accompanied by the requisite CBP Form 349, must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.* HMF refund requests must be submitted to CBP on a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350, and must either be mailed to the above address or submitted electronically to CBP via an Internet account established by the payer and located at *http://www.pay.gov.* Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the CBP Form 349 for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.'';

m. The introductory text to paragraph (e)(4)(iv) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';

n. Paragraph (e)(4)(iv)(A) is amended by adding after the last sentence the following language, ''Refund requests must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or submitted electronically to CBP via an Internet account established by the payer and located at *http://www.pay.gov.* Approved HMF refund payments will be made using the Automated Clearinghouse (ACH) to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.'';

o. Paragraphs (e)(4)(iv)(B)(*1*), (*2*), and (*3*) are amended by removing the word ''Customs'' each place it appears and adding in its place the term ''CBP'';

p. Paragraph (e)(4)(iv)(B)(*4*) is amended by: Removing the word ''Customs'' and adding in its place the term ''CBP''; and removing the number ''90'' each place it appears and adding in its place the number ''180'';

q. Paragraph (e)(4)(iv)(B)(*5*) is amended: In the second sentence, by removing the words ''by Customs'' and adding in their place the words ''by CBP'', and by removing the words ''and Customs'' and adding in their place the words ''and CBP's''; and in the fourth and fifth sentences, by removing the word ''Customs'' each place it appears and adding in its place the term ''CBP'';

r. Paragraph (e)(4)(iv)(C) is amended by removing the word ''Customs'' each place it appears and adding in its place the term ''CBP'';

s. Paragraph (g) is amended: In the first, second, fourth, and fifth sentences, by removing the word ''shall'' each place it appears and adding in its place the word ''must'', and by removing the word ''Customs'' each place it appears and adding in its place the term ''CBP''; and in the third sentence, by removing the language ''shall advise the Director, Accounting Services—Accounts Receivable, P.O. Box 68903, Indianapolis, Indiana 46268, of the name, address, and telephone number of a responsible officer who shall be'' and adding in its place the language, ''must advise the Director, Revenue Division, 6650 Telecom Drive, Indianapolis, Indiana, 46278, of the name, address, e-mail and telephone number of a responsible office who is'';

t. Paragraph (h)(1) is amended by removing the word ''shall'' each place it appears and adding in its place the word ''will'';

u. Paragraph (h)(2) is amended by removing the word ''shall'' each place it appears and adding in its place the word ''must''; and

v. Paragraph (h)(3) is amended by removing the word ''shall'' each place it appears and adding in its place the word ''will''.

The revisions to § 24.24 read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(c) * * *

(8) * * *

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by CBP. Subsequent to payment of the fee, a refund may be requested by submitting to CBP a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350. The CBP Form 350 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.* Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). A description of the cargo listed in the shipping documents and a brief summary of the intended use of the goods, if such use in not reflected in the documents, are acceptable evidence for certification purposes. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.* * *

* * * * *

(e) * * *

(1) * * *

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report must pay all accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.*

(2) * * *

(iii) *Foreign Trade Zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, must pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the

CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.* Fees must be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) * * *

(ii) *Fee payment.* The operator of the passenger-carrying vessel must pay the accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov.*

* * * * *

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: July 31, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–17967 Filed 8–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 903, 941, 945, and 966

[Docket No. FR–4990–P–01]

RIN 2577–AC59

Streamlining Public Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would support HUD's overall objective to streamline the regulations governing public housing programs and to facilitate the transition of public housing agencies (PHAs) to asset management. In general, this proposed rule would streamline portions of the public housing regulations, and more closely align the regulatory framework of public housing with other federally subsidized housing programs, providing PHAs greater flexibility within the parameters of current law. This proposed rule offers general principles and basic guidelines for PHAs to follow, rather than overly prescriptive measures, thus allowing PHAs to operate projects more efficiently as PHAs move toward asset management.

DATES: *Comment Due Date:* October 6, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bessy M. Kong, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, telephone number (202) 708–0713, extension 2548 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2005, at 70 FR 54983, HUD published a final rule implementing revisions to the Public Housing Operating Fund program, providing for a new formula for distributing operating subsidy to PHAs, and establishing requirements for PHAs to convert to asset management. That final rule was based substantially on the recommendations of the congressionally funded Harvard University Graduate School of Design study on the cost of operating well-run public housing (Harvard Cost Study). Appendix H of the Harvard Cost Study included a list of requirements unique to public housing that, if alleviated or otherwise eliminated, would either make it easier for PHAs to transition to asset management or would more closely conform the public housing regulatory environment with that of other assisted housing programs. Generally, HUD agrees that streamlining the requirements and procedures included in the Harvard Cost Study would make the transition to asset management easier. Streamlining these processes would also increase PHA flexibility and reduce program costs.

This proposed rule does not, however, address all of the recommendations of the Harvard Cost Study. Specifically, while the Harvard Cost Study and other industry representatives identified the Department's regulations in the area of tenant participation, codified at 24 CFR part 964, as an area that would benefit from streamlining, the Department has chosen not to address part 964 in this rulemaking, but will consider addressing it separately.

II. This Proposed Rule

A. Overview of Proposed Changes

This proposed rule would amend 24 CFR part 903 to eliminate procedural requirements regarding the implementation of deconcentration policy. PHAs would no longer be required to determine the average income of all families residing in all covered developments, the average income of all families residing in each covered development, and whether each of the covered developments fall above, within, or below the Established Income Range. Part 903 would also be amended to remove unnecessary reporting requirements for PHA plans. PHAs would no longer be required to provide annual updates on PHA progress toward meeting goals described in the 5-year plan. Eliminating these requirements would benefit PHAs by reducing staff time devoted to administrative tasks and by achieving cost savings through reduced paperwork.

Part 941 would be revised to provide PHAs greater flexibility to structure mixed-finance transactions. Under the proposed rule, a PHA partner or owner entities would be permitted to serve as the general contractor for a mixed-finance project or development if certain conditions are met. PHAs would benefit from more options to develop mixed-finance projects and reduced project costs by working with a PHA partner or owner entity.

This proposed rule would also change 24 CFR part 966 to remove procedural requirements pertaining to grievances. PHAs would be permitted to establish their own procedures for informally settling grievances, obtaining a hearing, and preparing and distributing the decisions of the hearing officer or hearing panel. The elimination of these requirements would reduce PHA staff and administrative costs and increase their capacity to respond to hearing requests.

HUD recognizes that PHAs may incur some initial costs in making the determinations afforded by the increased flexibility under the proposed rule. However, the Department believes that the benefits to both the Department and PHAs far outweigh any costs associated with this proposed rule. Subsequent guidance will provide assistance in implementing this rule and will also help to minimize additional cost burdens associated with it.

B. Part-by-Part Discussion

This proposed rule would amend 24 CFR part 903 (Public Housing Agency Plans); part 941 (Public Housing Development); and subpart B of part 966 (Grievance Procedure). This proposed rule also removes 24 CFR part 945 (Designated Housing). This section of the preamble discusses the proposed regulatory amendments to these parts.

1. Part 903—Public Housing Agency Plans

Subpart A of part 903, entitled ''Deconcentration of Poverty and Fair Housing in Program Admissions,'' would be amended to remove procedural requirements not required by statute. The elimination of these requirements would allow PHAs flexibility in bringing higher-income tenants into lower-income developments and lower-income tenants into higher-income developments, to avoid a concentration of low-income families as prohibited by law. HUD data indicate that most PHAs have few properties that fall outside the established income range. Additionally, PHAs that have developments above the established income range often are exempt, since the income level is considered extremely low-income.

The rule would remove prescriptive language in § 903.2(c) pertaining to steps for implementation of deconcentration and elements of explanations or justifications, and would allow PHAs to establish discretionary strategies. A PHA's deconcentration plan and practices may not take preference over the requirements for provision of accessible units for disabled tenants. Section 903.2(d), which sets forth fair housing requirements, would be streamlined and moved to subpart B of 903.

Subpart B of part 903, entitled ''PHA Plans,'' would be amended to remove certain obsolete references and requirements that address initial plan requirements. Also, references to the Drug Elimination Grant Program, which is no longer funded, would be removed. Further, this subpart would be amended to include statutory language not previously contained in the regulation pertaining to PHA Plan updates, including language requiring 5-year and annual plans to include statements about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking, in accordance with the requirements of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162).

Section 903.7, which describes the information a PHA must provide in its Annual Plan, would also be revised to incorporate fair housing requirements and to more closely reflect statutory provisions. Currently codified information that is more appropriately provided in non-regulatory guidance would also be removed from the regulations, including some of the detailed information related to statements of housing needs, financial resources, and capital needs. The requirement for a statement of PHA grievance procedures would be amended to conform to changes to part 966 described elsewhere in this proposed rule. Redundant information would be revised or removed to clarify the regulation, including the requirement for a statement about public housing developments designated as housing for elderly families or families with disabilities.

Sections 903.11 and 903.12, which provide information for submitting streamlined plans, would be removed. The submission process for all PHAs would be limited to policies concerning elements within HUD's scope of review. The scope of review is addressed in the regulation. These regulations address certain discretionary policies for which there is no HUD approval mechanism other than the Annual Plan. HUD would not impose any additional requirements similar to those that currently exist relating to submission requirements for small PHAs, high-performing PHAs, or those that administer only tenant-based assistance. HUD believes that such information is more suitable for non-regulatory guidance rather than in a regulation. PHAs would continue to provide information on how the public may reasonably obtain additional information on the PHA policies contained in the Annual Plan.

Section 903.13 would be amended to increase PHA flexibility, reduce program costs, and facilitate the transition to asset management. Specifically, § 903.13 would be amended to clarify § 903.13(a), remove the prescriptive requirements in § 903.13(b), and conform the section to requirements provided for by statute.

Section 903.23, which describes the process by which HUD reviews, approves, or disapproves an Annual Plan, would be revised to remove repetitive language that is already addressed in this section.

2. Part 941—Public Housing Development

Section 941.606 would be amended to provide greater flexibility for PHAs to structure mixed-finance transactions. It would allow a PHA partner and/or owner entities (or other entities with an identity of interest) to serve as the general contractor for a mixed-finance

project or development if the PHA or its partner conducts a public bid process and the identity of interest general contractor's bid is the lowest bid submitted in response to a public request for bids, or the PHA submits written justification and provides an independent third-party cost estimate that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third-party estimate.

3. Part 945—Designated Housing—Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families

Part 945 would be removed because it is now obsolete. Part 945 does not incorporate the requirements of section 10(a) of the Housing Opportunity Program Extension Act of 1996, Public Law 104–120 (approved March 28, 1996). Section 10(a) amended section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e), which governs designated housing for elderly and disabled families. The 1996 Act requires a PHA that wants to designate certain housing for these populations to have an approved designated housing plan, which has a substantially different set of requirements than the current part 945 being removed.

4. Part 966 Subpart B—Grievance Procedures and Requirements

In subpart B, procedural requirements, not required by statute, would be eliminated to allow PHAs maximum flexibility in establishing and implementing grievance procedures.

Section 966.54, which describes the requirements for an informal settlement of grievances, would be removed to allow PHAs flexibility in establishing such a process.

Section 966.55, which describes the procedures to obtain a hearing, would be removed. PHAs would now have the flexibility to establish grievance procedures addressing failure to request a hearing and requiring escrow deposits. Matters related to scheduling and location would be merged with procedures governing the hearing.

Sections 966.56 and 966.57, which describe the procedures governing the hearing and decision of the hearing officer would be revised to remove language that is overly prescriptive or repetitive. For instance, matters relating to transcripts, copies, and how the hearing is conducted would be left for the PHA to determine.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is exclusively concerned with PHAs that administer public housing programs under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would streamline administration of the public housing program by PHAs and give PHAs more flexibility in establishing policies that better meet local housing needs and priorities. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of fewer than 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements described in this rule in 24 CFR parts 903, 941, and 945 have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0226, 2577–0157, 2577–0192, and 2577–0157, respectively. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandate on any state, local, or tribal government,

or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing

24 CFR Part 945

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 966

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 903, 941, 945, and 966 as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c and 3535(d).

2. Revise the heading of subpart A to read as follows:

Subpart A—Deconcentration of Poverty

3. Amend § 903.2 by revising paragraph (c), and removing paragraphs (d)(1), (d)(2), (d)(3), and (e) to read as follows:

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

* * * * *

(c) *Deconcentration of poverty and income mixing.* (1) A PHA's deconcentration policy may include, but is not limited to, providing for one or more of the following actions:

(i) Providing incentives designed to encourage eligible families with higher incomes to occupy dwelling units in developments predominantly occupied by eligible families having lower incomes, and provide for occupancy of eligible families having lower incomes in developments predominantly occupied by eligible families having higher incomes.

(ii) Skipping a family on the waiting list to reach another family in an effort to further the goals of the PHA's deconcentration policy.

(iii) Providing such other strategies as permitted by statute and determined by the PHA.

(2) A family has the sole discretion whether to accept an offer of a unit made under a PHA's deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy.

* * * * *

4. Amend § 903.4 by revising paragraph (a), removing paragraph (c), redesignating existing paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

§ 903.4 What are the public housing agency plans?

(a) *5-Year Plan.* Not less than once every 5 fiscal years, each public housing agency shall submit to HUD a plan that includes, with respect to the 5 fiscal years immediately following the date on which the plan is submitted:

(1) The PHA's mission for serving the needs of low-income, very low-income, and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan.

(b) *Annual Plan.* (1) *In general.* Each PHA shall submit to HUD an annual PHA plan under this subsection for each fiscal year for which the PHA receives assistance under:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(2) *Updates.* For each fiscal year after the initial submission of an annual plan, a PHA may comply with requirements for submission of a plan under this subsection by submitting an update of the plan for the fiscal year.

* * * * *

5. Revise § 903.5 to read as follows:

§ 903.5 When must a PHA submit the plans to HUD?

(a) *5-Year Plan.* For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan, in accordance with § 903.7(r).)

(b) *Annual Plans.* For all PHAs, after submission of the first annual plan, all subsequent annual plans will be due no later than 75 days before the commencement of the PHA's fiscal year.

6. Add § 903.6(a)(3) to read as follows:

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) * * *

(3) The goals, objectives, policies, or programs that will enable the PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

7. Amend § 903.7 as follows:

a. Revise the introductory text;

b. Revise paragraphs (a), (b), (c), (e)(1), (f), (h), (i)(1), (j)(2), and (j)(3);

c. Remove paragraph (j)(5);

d. Revise paragraphs (k)(1)(iii) and (k)(1)(iv) and add paragraph (k)(1)(v);

e. Redesignate paragraphs (m) through (r) as (n) through (s), respectively;

f. Add a new paragraph (m);

g. Remove newly redesignated paragraph (n)(3) and redesignate paragraph (n)(4) as paragraph (n)(3);

h. Revise newly redesignated paragraph (p);

i. Remove newly redesignated paragraph (s)(1), and redesignate paragraphs (s)(2) and (s)(3) as paragraphs (s)(1) and (s)(2), respectively.

The revisions and additions read as follows:

§ 903.7 What information must a PHA provide in the Annual Plan?

The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* This statement must address the housing needs of the extremely low-income, low-income, and very low-income families that reside in the jurisdiction served by the PHA, and other families that are on the public housing and Section 8 tenant-based assistance waiting lists, including the housing needs of elderly families, disabled families, households of various races and ethnic groups residing in the jurisdiction or on the waiting list, and the means by which the PHA intends, to the maximum extent possible, to address those needs.

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection, and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)), as well as any unit assignment policies for public housing. This statement must include the following information:

(1) *Deconcentration policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

(2) *Waiting list procedures.* The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments may include (notwithstanding any other law, regulation, handbook, or notice to the contrary) a system of site-based waiting lists as authorized by section 6(r) of the 1937 Act (42 U.S.C. 1437d) that is consistent with all applicable civil rights and fair housing laws and regulations.

(c) *A statement of financial resources.* A statement of financial resources available to the PHA and planned uses for those resources.

* * * * *

(e) *A statement of the PHA's rules, standards, and policies.* (1) A statement of the PHA's rules, standards, and policies governing maintenance and management of housing owned, assisted, or operated by the PHA.

* * * * *

(f) *Grievance procedures.* A statement of the PHA's grievance procedures.

* * * * *

(h) *A statement of any demolition and/or disposition.* With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. **Note:** The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(i) *A statement of the designated public housing developments.* (1) A statement of the public housing developments (or portions thereof) that the PHA has designated or will apply for designation as housing for only elderly families, or only disabled families, or elderly and disabled families, as provided by section 7 of the 1937 Act (42 U.S.C. 1437e). **Note:** The designated housing application and approval process is a separate process.

* * * * *

(j) * * *

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33 of the 1937 Act.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received to be used for rental assistance or other housing assistance in connection with such conversion.

* * * * *

(k) * * *

(1) * * *

(iii) An approved HOPE I program (42 U.S.C. 1437aaa);

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z–4); or

(v) Any homeownership programs administered by the PHA under section 9(d)(1)(J) of the 1937 Act (42 U.S.C. 1437g).

* * * * *

(m)(1) A description of any activities, services, or programs provided or offered by a PHA, either directly or in partnership with other service providers, to child or adult victims of violence, dating violence, sexual assault, or stalking;

(2) A description of any activities, services, or programs provided or offered by a PHA that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking; and

(3) A description of any activities, services, or programs provided or offered by a PHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.

* * * * *

(p) *Civil rights certification and fair housing.* All admission, occupancy, and other policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and with regulations to affirmatively further fair housing.

(1) *General fair housing requirements.* (i) Nondiscrimination. A PHA must carry out its PHA plan in conformity with the nondiscrimination requirements in federal civil rights laws, including Title VI of the Civil Rights Act of 1964 and the Fair Housing Act.

(ii) Affirmatively furthering fair housing. PHA policies that govern eligibility, selection, and admissions under its PHA plan should be designed to reduce racial and national origin concentrations. Any affirmative steps or incentives a PHA plans to take must be stated in the admissions policy. HUD regulations at 24 CFR 1.4(b)(6)(ii) provide that PHAs should take affirmative steps to overcome the effects of conditions that resulted in limiting participation of persons due to any prohibited basis.

(2) *Site-based waiting lists.* (i) The PHA plan shall address the reasonable measures the PHA has taken and will take to ensure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing requirements. Measures include marketing activities to attract applicants regardless of race or ethnicity and providing full disclosure to each applicant of all available developments and programs, including amenities and accessibility, within the PHA's jurisdiction.

(ii) Adoption of a site-based waiting list may not violate any court order, settlement agreement, conciliation agreement, voluntary compliance agreement, or any other agreement with HUD.

(3) *Civil rights certification.* (i) The PHA must certify, as part of both its annual and 5-year plans, that it will carry out its plan in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA also must certify that it will affirmatively further fair housing.

(ii) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.7(p)(1), examines its programs or proposed programs to identify any impediments to fair housing choice within those programs, addresses those impediments in a reasonable fashion in view of the resources available, and works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing in conformity with § 903.15. A PHA shall maintain records reflecting these analyses and actions.

* * * * *

§§ 903.11 and 903.12 [Removed]

8. Remove §§ 903.11 and 903.12.

9. Amend § 903.13 by revising paragraphs (a) and (b) to read as follows:

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a)(1) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(2) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(b) Each PHA must establish one or more Resident Advisory Boards.

* * * * *

§ 903.23 [Amended]

10. Amend § 903.23 by removing paragraph (c)(1), redesignating existing paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(1), (c)(2), and (c)(3), respectively, removing paragraph (d), and redesignating existing paragraph (e) as paragraph (d).

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

11. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, 3535(d).

12. Revise § 941.606(n)(1)(ii)(B) to read as follows:

§ 941.606 Proposal.

* * * * *

(n) * * *

(1) * * *

(ii) * * *

(B) If the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract if either:

(*1*) The identity of interest general contractor's bid is the lowest bid submitted in response to a public request for bids; or

(*2*) The PHA submits a written justification and provides an independent third-party cost estimate that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third-party cost estimate.

* * * * *

PART 945—[REMOVED]

13. Under the authority of 42 U.S.C. 1473e and 3535(d), part 945 is removed.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURES

14. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

15. Amend § 966.52 by revising paragraph (a) to read as follows:

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance, as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart. A PHA may establish an expedited grievance procedure as defined in § 966.53.

* * * * *

16. Amend § 966.53 by revising paragraph (b), removing paragraph (e), redesignating paragraph (d) as paragraph (e) and revising it, adding new paragraph (d) and removing paragraph (g) to read as follows:

§ 966.53 Definitions.

* * * * *

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office.

* * * * *

(d) *Expedited grievance* means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) *Hearing officer* shall mean an impartial person or persons designated by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person.

* * * * *

17. Remove § 966.54 and § 966.55.

18. Amend § 966.56 by revising paragraph (a), removing paragraphs (b)(5) and (c), redesignating paragraph (d) as paragraph (c) and revising it, redesignating existing paragraph (e) as paragraph (d), removing paragraphs (f) and (g), and redesignating existing paragraph (h) as paragraph (e) to read as follows:

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate official.

* * * * *

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed 5 business days or may make a determination that the party has waived the party's right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

* * * * *

19. Revise § 966.57 to read as follows:

§ 966.57 Decision of the hearing officer.

(a) The hearing officer shall prepare a written decision, including the reasons for the PHA's decision, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder.

(b) The decision of the hearing officer shall be binding on the PHA, unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affects the complainant's rights, duties, welfare, or status.

(2) The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the ACC between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA, or which denies the relief requested by the complainant in whole or in part, shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

Dated: July 7, 2008.

Paula O. Blunt,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. E8–17839 Filed 8–4–08; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1633; MB Docket No 08–140; RM–11470]

Television Broadcasting Services; Williston, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Prairie Public Broadcasting, Inc. (''PPB''), the licensee of noncommercial educational station KWSE–DT, DTV channel *51, Williston, North Dakota. PPB requests the substitution of DTV channel *11 for channel *51 at Williston.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Margaret L. Miller, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–1633, adopted July 30, 2008, and released July 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS *(http://www.fcc.gov/cgb/ecfs/).* (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under North Dakota, is amended by adding channel *11 and removing channel *51 at Williston.

Federal Communications Commission.

Clay C. Pendarvis

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17915 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1601; MB Docket No. 08–125; RM–11457]

Television Broadcasting Services; Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Local TV Pennsylvania License, LLC (''Local TV''), the licensee of WNEP–DT, DTV channel 49, Scranton, Pennsylvania. Local TV requests the substitution of DTV channel 50 for channel 49 at Scranton.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–68012.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–125, adopted July 7, 2008, and released July 8, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432

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

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Pennsylvania, is amended by adding channel 50 and removing channel 49 at Scranton.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17916 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1630; MB Docket No. 08–134; RM–11466]

Television Broadcasting Services; Bismarck, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by KBMY–KBCY, LLC (''KBMY''), the licensee of KBMY(TV), analog channel 17, and KBMY–DT, DTV channel 16, Bismarck, North Dakota. KBMY requests the substitution of DTV channel 17, for DTV channel 16 at Bismarck.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John M. Burgett, Esq., Wiley Rein LLP, 117 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–134, adopted July 9, 2008, and released July 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under North Dakota, is amended by adding channel 17 and removing channel 16 at Bismarck.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17917 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1631; MB Docket No. 08–139; RM–11469]

Television Broadcasting Services; Bainbridge, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by New Age Media of Tallahassee License, LLC (''New Age''), the licensee of WTLH–DT, DTV channel 49, Bainbridge, Georgia. New Age requests the substitution of DTV channel 50 for channel 49 at Bainbridge.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph M. Di Scipio, Esq., Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–139, adopted July 7, 2008, and released July 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Georgia, is amended by adding channel 50 and removing channel 49 at Bainbridge.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17918 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1490; MB Docket No. 08–109; RM–11452]

Television Broadcasting Services; Sioux City, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by KPTH License, Inc. (''KPTH''), pre-transition digital channel 49, and assignee of post-transition digital channel 44, Sioux City, Iowa. KPTH requests the substitution of channel 49 for post-transition digital channel 44 at Sioux City, Iowa.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald, & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *shaun.maher@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–109, adopted July 10, 2008, and released July 11, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Iowa, is amended by adding channel 49 and removing channel 44 at Sioux City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17921 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1491; MB Docket No. 08–117; RM–11450]

Television Broadcasting Services; St. Paul, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Twin Cities Public Television, Inc. (''Twin Cities''), the licensee of KTCI–TV, analog channel *16, and permittee of post-transition DTV channel *26, St. Paul, Minnesota. Twin Cities requests the substitution of DTV channel *38 for its post-transition DTV channel *26.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Lawrence M. Miller, Esq., Schwartz, Woods & Miller, 1233 20th Street, NW., Suite 610, Washington, DC 20036–7322.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *shaun.maher@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–117, adopted July 2, 2008, and released July 8, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Minnesota, is amended by adding channel *38 and removing channel *26 at St. Paul.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17926 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1488; MB Docket No. 08–111; RM–11454]

Television Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Hearst-Argyle Television, Inc. (''KMBC''), the licensee of KMBC–DT, pre-transition digital channel 7, and permittee of KMBC–DT, post-transition digital channel 9, Kansas City, Missouri. KMBC requests the substitution of channel 29 for post-transition digital channel 9 at Kansas City.

DATES: Comments must be filed on or before September 4, 2008, and reply comments on or before September 19, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey and Leonard, LLP, Wachovia Capital Center, Suite 1600, 150 Fayettesville Street, P.O. Box 1800, Raleigh, NC 27602.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *shaun.maher@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–111, adopted July 10, 2008, and released July 11, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This

document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Missouri, is amended by adding channel 29 and removing channel 9 at Kansas City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17920 Filed 8–4–08; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 528 and 552

[GSAR Case 2006–G517; Docket 2008–0007; Sequence 13]

RIN 3090–AI64

General Services Acquisition Regulation; GSAR Case 2006–G517; Rewrite of GSAR Part 528, Bonds and Insurance

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule with request for comments.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language that provides requirements for bonds and insurance.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G517 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2006–G517'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2006–G517. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2006–G517'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G517 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949, or by e-mail at *michaelo.jackson@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G517.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR 528.202, Acceptability of corporate sureties, and 528.310, Contract clause for work on a Government installation; to add 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts, and the GSAR clause at 552.228–5, Government as Additional Insured; and to delete GSAR clause 552.228–70, Workers' Compensation Laws.

This rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 528. The rule amends Part 528 to update the text addressing GSAR 528.202, Acceptability of corporate sureties, and 528.310, Contract clause for work on a Government installation. The rule adds 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts, and the GSAR clause at 552.228–5, Government as Additional Insured, and deletes the clause 552.228–70, Workers' Compensation Laws. The specific changes are as follows:

- The language in 528.202, Acceptability of corporate sureties, is revised to change ''you'' to ''The contracting officer.''
- GSAR 528.310, Contract clause for work on a Government installation, deletes 528.310(b) and the clause 552.228–70, Workers' Compensation Laws. Clause 552.228–70 is deleted because its only purpose is to recite the fact that 40 U.S.C. 3172 effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws and has no

contractual effect. GSAR 528.310(b) is being deleted because it relates to proposed deletion of 552.228–70 where it states ''in the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements'' the phrase ''the clause'' refers to 552.528–70.

• GSA is proposing to add 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts. The new language at 528.311–1 clarifies the usage for the FAR clause 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts. The language states that other than contracts and solicitations for construction and architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause, FAR clause 52.228–7 is required.

• GSA is proposing to add clause 552.228–5 to the GSAR. The language in this clause was previously in the GSAR and based upon GSA's experience with contracts that do not have such a clause, it is being reinstated to protect the Federal Government's interest. In essence, the new 552.228–5 replaced the newly deleted 552.228–70. GSAR 552.228–70 (formerly GSAR 552.228–75) did not serve any purpose other than to recite the fact that 40 U.S.C. 3172 (formerly 40 U.S.C. 290) effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws. 552.228–70 had no contractual effect and was superfluous.

Discussion of Comments

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 528 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR Case 2006–G517), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 528 and 552

Government procurement.

Dated: July 28, 2008.

Al Matera,

Director, Office of Acquisition Policy, U.S. General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 528 and 552 as set forth below:

PART 528—BONDS AND INSURANCE

1. The authority citation for 48 CFR part 528 is revised to read as follows:

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

528.202 [Amended]

2. Amend section 528.202 by removing the word ''You'' and adding the words ''The contracting officer'' in its place.

3. Revise section 528.310 to read as follows:

528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228–5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold.

(b) The contract will require work to be performed on Government property.

4. Add section 528.311 to read as follows:

528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

528.311–1 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for 48 CFR part 552 continues to read as follows:

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

6. Add section 552.228–5 to read as follows:

552.228–5 Government as Additional Insured.

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (DATE)

(a) This clause supplements the requirements set forth in FAR clause 52.528–5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

552.228–70 [Removed]

7. Section 552.228–70 is removed.

[FR Doc. E8–17938 Filed 8–4–08; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 546 and 552

[GSAR Case 2008–G514; Docket 2008–0007; Sequence 14]

RIN 3090–AI69

General Services Acquisition Regulation; GSAR Case 2008–G514; Rewrite of GSAR Part 546, Quality Assurance

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language that provides requirements for quality assurance.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G514 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*. Submit comments

via the Federal eRulemaking portal by inputting ''GSAR Case 2008–G514'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2008–G51. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2008–G514'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008–G514 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Jeritta Parnell at (202) 501–4082. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G514.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR Part 546, Quality Assurance. This proposed rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative. The initiative was undertaken by GSA to revise the GSAM so as to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register**.

This proposed rule revises GSAR 546 as follows:

GSAR 546.302–70, Source inspection by Quality Approved Manufacturer for fixed-price supply contracts, is revised to include applicability to certain programs, *i.e.*, stock, special order program, wildfire. The subsection is revised to include reference to FAR 52.246–2, Inspection of Supplies—Fixed Price.

GSAR 546.302–71, Source Inspection, is retained with no revisions.

GSAR 546.302–72, Destination Inspection, is added to prescribe the clause at 552.246–78, Inspection at Destination.

The language in 546.312, Construction contracts, that prescribes the clause at 552.246–72, Final Inspection and Tests, is deleted.

The language in 546.708, Warranties of data, is revised to place emphasis on the role of the contracting officer.

The language in 546.710, Contract clause, is revised to add the clause at 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature. This clause is used when the FAR clause at 52.246–17, Warranty of Supplies of a Noncomplex Nature, is included in solicitations and contracts. The prescriptive language in paragraphs (b), (c), and (d) is deleted. The clauses prescribed in paragraphs (b), (c), and (d) are being deleted.

The clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, is being deleted as it unnecessarily repeats, paraphrases, or otherwise restates material contained in the FAR. A new clause 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, is added to provide for GSA unique rights and remedies.

The clause at 552.246.70, Source Inspection by Quality Approved Manufacturer, is revised to edit and clarify existing clause language.

The clause at 552.246–71, Source Inspection by Government, is retained.

The clause at 552.246–72, Final Inspection and Tests, is being deleted. The FAR provides sufficient guidance.

The clause at 552.246–73, Warranty Multiple Award Schedule, is being relocated to GSAR Part 538.

The clause at 552.246–75, Guarantees, is being deleted. The FAR provides sufficient guidance.

The clause at 552.246–76, Pesticides, is being deleted. This clause was determined to be unnecessary for inclusion in the GSAR.

The clause at 552.246–78, Inspection at Destination, is being added to provide for inspection by Government personnel at destination.

Discussion of Comments

There were no comments received in response to the ''Advanced Notice of Proposed Rulemaking'' pertaining to this GSAR Part.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions delete obsolete coverage, clarify existing coverage, and edit current language. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 546 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (GSAR case 2008–G514), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 546 and 552

Government procurement.

Dated: July 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 546 and 552 as set forth below:

1. The authority citation for 48 CFR parts 546 and 552 continues to read as follows:

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

PART 546—QUALITY ASSURANCE

2. Revise section 546.302–70 to read as follows:

546.302–70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.

(a) For solicitations issued and contracts awarded by FAS that will exceed the simplified acquisition threshold and include the clause at 52.246–2, Inspection of Supplies—Fixed-Price—

(1) The contracting officer shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection for the Stock and Special Order Programs; and

(2) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands, under paragraph (a)(1) of the clause at 552.246–70 under any of the following circumstances after coordinating the authorization with QVOC and documenting the authorization in the file:

(i) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(ii) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(iii) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

(b) When the estimated value of the acquisition is below the simplified acquisition threshold and will include the clause at 52.246–2, Inspection of Supplies—Fixed-Price, insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, only—

(1) In solicitations and contracts that support the Wildfire program; and

(2) In contracts when a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

546.302–71 [Amended]

3. Amend section 546.302–71 by removing ''FSS'' and adding ''FAS'' in its place.

4. Add section 546.302–72 to read as follows:

546.302–72 Destination inspection.

The contracting officer shall include the clause at 552.246–78, Inspection at Destination, in supply contracts that require inspection at destination.

546.312 [Removed]

5. Remove section 546.312.

Subpart 546.4 [Removed]

6. Remove Subpart 546.4.

7. Revise section 546.708 to read as follows:

546.708 Warranties of data.

(a) The contracting officer shall use warranties of data only when both of the following conditions are applicable:

(1) Use of a warranty is in the Government's interest and is documented.

(2) The contracting director concurs with the decision.

(b) The contracting officer shall consult with the technical or specification manager responsible for developing any warranties of data.

8. Revise section 546.710 to read as follows:

546.710 Contract clause.

The contracting office shall insert the clause at 552.246—77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, when using the clause at 52.246–17 in solicitations and contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.246–17 [Removed]

9. Remove section 552.246–17.

10. Revise section 552.246–70 to read as follows:

552.246–70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302—70, insert the following clause:

Source Inspection By Quality Approved Manufacturer (Date)

(a) *Inspection system and inspection of facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246—2) of this contract shall be maintained throughout the contract period. Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001:2000 (Quality Management Systems—Requirements). A documented description of the inspection system shall be made available to the Government before contract award. At the sole discretion of the Contracting Officer, he/she may authorize in writing exceptions to the quality assurance standards identified above. The Contractor shall immediately notify the Administrative Contracting Officer (ACO) of any changes made in the inspection system during the contract period. As used herein, the term ''inspection system'' means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the U.S. Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001:2000 or as otherwise approved by the Government, records shall include the date inspection and testing were performed. These records shall be available for—

(i) 3 years after final payment; or

(ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) The Contractor shall provide the Administrative Contracting Officer (ACO) with the name of the individual and an alternate responsible for the inspection system. In the event that the designated individual(s) becomes unavailable to oversee the inspection system, the Contractor, within 10 calendar days of such event, shall provide the ACO with the names of the replacement individual(s).

(b) *Inspection by the Contractor.* The Contractor is required to demonstrate that the supplies in the shipment have been subject to had have passed all inspections and tests required by the contract and meet the requirements of the contract.

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor's representation as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by

the Government is completed and shipment is authorized by the Government.

(2) The offeror shall indicate, in the spaces provided below the location(s) at which the supplies will be inspected or made available for inspection.

INSPECTION POINTS

Item No(s).	Name of Manufacturer	Name, Address (Including County), and	Telephone Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: If additional space is needed, the offeror may furnish the requested information by an attachment to the offer.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification, inspection, and testing. Samples selected for testing will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____✳_____ months after acceptance shall, at the Government's option, be replaced, repaired, or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its own expense, supplies rejected or required to be replaced, repaired, or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies, and reducing the contract price by an equitable amount under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) The Contractor may be issued a Quality Deficiency Notice (QDN) if—

(i) Supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements; or

(ii) Deficiencies in either plant quality or process controls are found. Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the Government representative, within 5 workdays, of the action plan or the corrective action taken. The Government may elect to verify the corrective action at the Contractor location(s). Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination of the contract. Delays due to the insurance of a QDN do not constitute excusable delay under the default clause of this contract. Failure to complete corrective action in a timely manner may result in termination of the contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies that do not meet the requirements of the contract are being shipped, or if the contractor fails to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor shall be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246—2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____✳_____ per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____✳_____ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____✳_____ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) of this clause, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246—2, supplies may be—

(1) Stored and charged against the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return shall also be charged against the Contractor's account);

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale; or

(4) Otherwise disposed of by the Government.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of clause)

Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.

**The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.

552.246–71 [Amended]

11. Amend section 552.246–71 by—

a. Revising the date of the clause to read ''(Date)'';

b. Removing from paragraph (c)(3) ''Virgin Islands'' and adding ''U.S. Virgin Islands'' in its place; and

c. Removing from the end of the section, at the footnote, ''Supply'' and adding ''Acquisition'' in its place.

552.246–72 through 552.246–76 [Reserved]

12. Remove and reserve sections 552.246–72 through 552.246–76.

13. Add sections 552.246–77 and 552.246–78 to read as follows:

552.246–77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710(a), insert the following clause in solicitations and contracts that include FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature.

Additional Contract Warranty Provisions For Supplies of a Noncomplex Nature (Date)

(a) *Definition.* Correction, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense.

(c) *Remedies available to the Government.* When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(End of clause)

552.246–78 Inspection at Destination.

As prescribed in 546.302–72 insert the following clause:

INSPECTION AT DESTINATION (DATE)

Inspection of all purchases under this contract will be made at destination by an authorized government representative.

(End of clause)

[FR Doc. E8–17902 Filed 8–4–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-ES-2008-0063; 92300-1113-0000-9B]

RIN 1018–AU62

Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), propose to amend the formats of the Lists of Endangered and Threatened Wildlife and Plants to include current practices and standards that will make the regulations and Lists easier for the public to understand. When we finalize this proposed rule, we will publish the Lists of Endangered and Threatened Wildlife and Plants in their entirety in the new formats.

DATES: We must receive comments by September 4, 2008 in order to ensure their consideration in our final decision.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-ES-2008-0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Michael Franz, Office of Program Support, Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA, 22203; telephone 703-358-2079. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The Lists of Endangered and Threatened Wildlife and Plants (Lists), found in the Code of Federal Regulations (CFR) at 50 CFR 17.11 for wildlife and 50 CFR 17.12 for plants, contain the names of species officially listed as endangered or threatened under the Endangered Species Act of 1973, as amended 16 U.S.C. §§1531 *et seq.*(ESA). The most recent compilation of Lists appears in the 2007 edition of title 50 CFR, which was issued in early 2008. That compilation included regulatory amendments effective as of October 1, 2007.

The species were placed on the Lists by FWS, by the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration, or by both of these agencies in joint rulemaking actions. References to ''Services'' in the text of §17.11 and §17.12 refer to both of these agencies.

The Lists represent the official Government record of which species are listed and where they are considered listed under the ESA. Over time, we have noted numerous anomalies in the Lists, including ambiguous entries and confusing format and column titles. After detailed research on the origin, history, and purpose of the Lists, we determined that the format, references, and standards need to be updated. This rule is designed to address these observed problems and propose corrections to enhance the clarity of the lists.

History of the Lists of Endangered and Threatened Species

The first endangered species list was published March 8, 1969 (35 FR 5034) and included only two columns, Common Name and Scientific Name. In 1971, that list was added to title 50 CFR in the newly created section 17 and divided into two separate lists with appendix A being the ''U.S. List of Endangered Foreign Fish and Wildlife'' with three columns (Common Name, Scientific Name, and Where Found) and appendix D being the ''United States' List of Endangered Native Fish and Wildlife'' with still only the original two columns (Common Name and Scientific Name).

In 1974, the two appendices were changed into the now familiar locations in §17.11 and §17.12 with the appendix A becoming §17.11 (Foreign) and

appendix D becoming §17.12 (Native). In 1975, the two Lists were fused into one list at §17.11 (Wildlife), and the columns were expanded from three to eight (Common Name, Scientific Name, Population, Known Distribution, Portion of Range Where Endangered or Threatened, Status, When Listed, and Special Rules). See figure 1, below. The ''When Listed'' footnote system was created with 11 footnotes. Section 17.12 was reserved for ''Endangered and Threatened Plants''.

Figure 1 - §17.11 Wildlife

Species		Population		Range	Status	When Listed	Special rules
Common name	Scientific name	Known Distribution	Portion of Range Where Endangered or Threatened				

In 1977, §17.12 was populated with only seven columns (Common Name, Scientific Name, Known Distribution, Portion of Range Where Threatened or Endangered, Status, When Listed, and Special rules). See figure 2, below. The §17.12 List had its own footnote system, which was only one footnote at that time.

Figure 2 - §17.12 Plants

Species		Range		Status	When Listed	Special rules
Common name	Scientific name	Known Distribution	Portion of Range Where Threatened or Endangered			

In 1980, the Lists were reformatted into their present columns. A proposed rule was published on August 15, 1979 (44 FR 47862), proposing to include the following columns for §17.11: Common name, Scientific name, Historic range, Population where endangered or threatened, Status, When listed, Critical habitat, and Special rules; and the following columns for §17.12: Scientific name, Common name, Historic range, Status, When listed, Critical habitat, and Special rules. A final rule was published on February 27, 1980 (45 FR 13010), with the following columns for §17.11: Common name, Scientific name, Historic range, Vertebrate population where endangered or threatened, Status, When listed, Critical habitat, and Special rules. The final rule adopted the columns for §17.12 as they had appeared in the proposed rule. See figures 3 and 4.

Figure 3 - §17.11 Wildlife

Species		Historic Range	Vertebrate Population where Endangered or Threatened	Status	When Listed	Critical Habitat	Special Rules
Common Name	Scientific Name						

Figure 4 - §17.12 Plants

Species		Historic Range	Status	When Listed	Critical Habitat	Special Rules
Common Name	Scientific Name					

Neither the proposed rule nor the final rule included the entire Lists. The Lists were published in the new format with technical errors corrected on May 20, 1980 (45 FR 33767). On September 30, 1994 (59 FR 49848), the family grouping of the plants, which had resided in the scientific name column, was moved to a new column named ''Family.'' See figure 5.

Figure 5 - §17.12 Plants

Species		Historic Range	Family	Status	When Listed	Critical Habitat	Special Rules
Common Name	Scientific Name						

Rule Purpose

We are proposing all of the changes in this rulemaking to update the regulations to include current practices and standards and ensure that the regulations and lists are easy for the public to understand. We are also standardizing entries and correcting numerous anomalies, ambiguous entries, and confusing formats. None of the proposed changes are regulatory in nature; we are proposing them for the purpose of clarity. Technical corrections in the final rulemaking will include but are not limited to updating or correcting: historical range, footnotes, references to certain other applicable portions of title 50 CFR, synonyms, the spelling of species' names and providing more current names. No revisions will be made to the species, as defined in current 50 CFR 17.11(b) or 17.12(b), or its status. These two actions would require separate rulemakings following the procedures of part 424 of 50 CFR.

Renaming and Reorganizing the Lists' Columns

With this proposed rule, we are renaming and reorganizing the columns in the lists to clarify the types of information being presented.

''When listed'' to ''Citations''

For both Lists, we will replace the column heading ''When listed'' with ''Citations.'' This column currently contains footnote numbers referencing a table of citations for final listing rules and special rules under section 4(d) of the Act. When we last proposed to reformat the Lists in 1979, this table contained only 44 footnotes. The current table has more than 700 entries, and has become hard to manage and use. To correct this, we propose to replace the footnote numbers that currently populate this column with the actual **Federal Register** citation (volume and document starting page number) and publication date that are in the table following each list. We will also standardize the references so that they all refer to the first page of the published document and correct any errors. For example, some existing footnotes reference the wrong date or miss a citation reference. When we publish the Lists for the final rule, we will correct those entries to standardize and ease information promulgation.

''Vertebrate population where endangered or threatened'' to ''Where listed''

In the October 1, 2000, edition of the CFR, in the List of Endangered and Threatened Wildlife found at §17.11(h), all of the entries for invertebrate species within the column ''Vertebrate population where endangered or threatened'' were erroneously changed to ''Entire''. We had originally published these entries with ''NA'' (Not Applicable) in that column due to the title only applying to vertebrate populations. The error was purely editorial; it in no way changed any of the applicable provisions of law. Upon further investigation, we found that the location information of invertebrate species with experimental populations were placed in this column. We also discovered that as the experimental populations of invertebrate species were added to the wildlife list by the Service, many of those entries contained ''Dittos'' to show duplicate information in the Lists. Some of those entries containing ''Dittos'' followed entries that had been erroneously changed to ''Entire'' in 2000. As a result, there were numerous errors.

For the list of wildlife (§17.11(h)) only, we propose replacing the column heading ''Vertebrate population where endangered or threatened'' with ''Where listed,'' because certain entries in this column apply to invertebrate experimental populations. The new name ''Where listed'' better reflects the data within the column. We also propose changing all the current entries ''N/A'' to ''Entire'' to reflect the change in the column title. And lastly, we will no longer utilize the ''Dittos'' system to show duplicate information.

For the list of plants (§17.12(h)), we propose replacing the ''Family'' column with a ''Where listed'' column to standardize both lists to identical column and structure. We also propose populating each entry for that column with ''Entire'' because the ESA protection for all of the plants currently on the list applies to all individuals of a plant species wherever found. Future additions to the list may have a more limited entry under the ''Where listed'' column. The family name is available for each entry on the species' profile page accessible through the Service's website (*http://www.fws.gov/endangered/*).

These proposed amendments to the Lists are editorial in nature and involve no substantive changes to the List of Endangered and Threatened Wildlife found at 50 CFR 17.11(h) or the List of Endangered and Threatened Plants found at 50 CFR 17.12(h), nor to any applicable regulations.

Adding ESU and DPS Subtitles to ''Common Name''

Since the lists were last reformatted, the Services have implemented several policies that have affected the format of the §17.11 (h) list. NMFS's Evolutionarily Significant Unit (ESU) policy (56 FR 58612, November 20, 1991) and the interagency Policy Regarding the Recognition of Distinct Population Segment (DPS; 61 FR 4721, February 7, 1996) allow for more refined application of the ESA that better reflects the conservation needs of the taxon being considered, and avoids the inclusion of entities that may not warrant protection under the ESA. Currently, the ''Vertebrate population where endangered or threatened'' column distinguishes the different ESU and DPS entries for the same species by describing the geographic area where they occur, but without providing a name for the population. To facilitate distinguishing the ESU/DPS entries, we are proposing to add the ESU or DPS subtitle to the Common Name column in brackets (§17.11(h) only).

Reorganizing the Columns

We have reorganized the columns to separate the regulatory data columns from the ''information only'' and ''navigational reference'' data columns. We have placed all the regulatory columns [''Species (Common name (ESU/DPS) and Scientific name),'' ''Status,'' and ''Where listed''] together as the first four columns of the lists, the information-only column [''Historic range''] as the next column, and the navigational references [''Citations,'' ''Special rules,'' and ''Critical habitat''] as the final three columns. See Figures 6 – 9.

Figure 6 - Current §17.11 Column Titles and Positions:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Figure 7 - Proposed §17.11 Column Title and Positions:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Common name [ESU or DPS]	Scientific name						

Figure 8 - Current §17.12 Column Titles and Positions:

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						

Figure 9 - Proposed §17.12 Column Title and Positions:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Scientific name	Common name						

We also propose to reorganize and update the text introducing the lists of wildlife and plants (§17.11(h) and §17.12(h), respectively) to reflect the proposed changes described above.

Updating Standards References

For species' nomenclature (scientific and common names), we propose to change the primary source upon which we rely. The current text introducing the lists in §17.11 and §17.12 references two standards for scientific nomenclature: The International Code of Zoological Nomenclature and The International Code of Botanical Nomenclature. Respectfully, instead of referencing those International Codes, we propose that the Service now rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) which incorporates both of the International Code standards and the standard references adopted for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

In addition to incorporating the standards the service has already been using, ITIS is an authoritative taxonomic database (*http://www.itis.gov*) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. The U.S. partners include the National Oceanic and Atmospheric Administration of the Department of Commerce; the U.S. Geological Survey and National Park Service of the Department of the Interior; the Environmental Protection Agency; the Agricultural Research Service and Natural Resources Conservation Service of the Department of Agriculture; the National Biological Information Infrastructure (NBII); the Smithsonian Institution; and NatureServe (a nonprofit organization representing the Natural Heritage programs in the States). The NBII is a broad-based, collaborative program among Federal, State, international, nongovernmental, academic, and private industry partners. Its Federal partners include the FWS and the Bureau of Land Management of the Department of the Interior; the National Aeronautics and Space Administration; the National Science Foundation; the Tennessee Valley Authority; the Forest Service of the Department of Agriculture; the Federal Geographic Data Committee; and the Gap Analysis Program.

CITES is an international convention among 173 signatory countries (Parties) to ensure that international trade in specimens of wild animals and plants does not threaten their survival (50 CFR part 23). The CITES Parties have adopted standard nomenclatural and taxonomic references for species included in the CITES Appendices, which are listed in the most recent CITES resolution on standard nomenclature. (*http://www.cites.org/eng/res/index.shtml*)

Public Comments

You may submit your comments and materials concerning our proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* [FDMS Docket Number: FWS-R9-ES-2008-0063], or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Program Support, Endangered Species Program (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the U.S. Fish and Wildlife Service, Office of Program Support, Endangered Species Program (see **FOR FURTHER INFORMATION CONTACT**), or by visiting the *Federal*

eRulemaking Portal at http://*www.regulations.gov*.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This proposed rule is not significant and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866. The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB based its determination upon the following four criteria:

(a)Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b)Whether the rule will create inconsistencies with other Federal agencies' actions.

(c)Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d)Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes we are proposing to make are intended primarily to update the standards of scientific naming used in the Lists of Endangered and Threatened Wildlife and Plants and to clarify language in our regulations. These changes would not have a substantive impact on the scope of the regulation, and thus would not affect businesses or other small entities as defined in the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Would not have an annual effect on the economy of $100 million or more.

2. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

3. Would 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.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. Our proposal would simply reorganize and clarify existing regulations and provide new standard references for species' nomenclature. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. We are proposing only to reorganize and clarify existing regulations and provide new standard references for species' nomenclature. This action would therefore not interfere with constitutionally protected private property rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. As our proposal involves reorganizing and clarifying existing regulations, and providing new standard references for species' nomenclature, we do not expect it would have any effect on State or local governments or their activities. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain any new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule has been analyzed under the criteria of the National Environmental Policy act and 318 DM 2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10. This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

Government-to-Government Relationship with Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and the Department of the Interior's Manual at 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Our proposal would simply reorganize and clarify existing regulations and provide new standard references for species' nomenclature.

Energy Supply, Distribution, or Use

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 proposed rule proposes to revise the formats of the Lists of Endangered and Threatened Wildlife and Plants. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

Author

Michael Franz, Office of Program Support, compiled this document.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend §17.11 by revising paragraphs (a) through (g), and the introductory text and the column headings in the List of Endangered and Threatened Wildlife in paragraph (h), to read as follows:

§ 17.11 Endangered and threatened wildlife.

(a) The list in paragraph (h) of this section contains the wildlife species determined by the Services to be endangered or threatened. It also contains the wildlife species treated as endangered or threatened because they are similar in appearance to and may be confused with endangered or threatened species (see §17.50 *et seq.*). The ''Common name,'' ''Scientific name,'' ''Status,'' and ''Where listed'' columns provide regulatory information; together, they define the wildlife species within the meaning of the Act. When a taxon has more than one entry, the ''Status'' or ''Where listed'' column will identify its status in each relevant geographic area. The listing of a particular taxon includes all lower taxonomic units. For example, the genus Hylobates (gibbons) is listed as endangered throughout its entire range; consequently, all species, subspecies, and populations of that genus, wherever found, are considered listed as endangered for the purposes of the Act.

(b) ''Common name'' column: Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Common name'' column. If a species has been listed under the Evolutionary Significant Unit (ESU) policy or the Distinct Population Segment (DPS) policy (http://www.fws.gov/endangered/policy), the ESU or DPS names will be provided in brackets ''[ ]'' following the common name.

(c) ''Scientific name'' column: The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Scientific name'' column. The Services will rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) to determine a species' scientific name. ITIS incorporates the naming principles established by the International Code of Zoological Nomenclature. For details, see paragraph (g) of this section. If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature will be provided in brackets ''[ ]'' within the ''Scientific name'' column following the ITIS nomenclature.

(d) ''Status'' column: Within the ''Status'' column, the following abbreviations are used:

Abbreviation	Regulatory Status the Abbreviation Represents
E	Endangered
T	Threatened
E (S/A)	Endangered based on similarity of appearance to an existing endangered species
T (S/A)	Threatened based on similarity of appearance to an existing threatened species
XE	Essential experimental population
XN	Nonessential experimental population

(e) ''Where listed'' column: The ''Where listed'' column sets forth the geographic area where the species is listed for purposes of the Act. This column incorporates the ''Vertebrate population where endangered or threatened'' column used in the tables in pre-2008 publications of this list. The term ''Entire'' is defined as ''Wherever found.''

(f) The ''Historic range,'' ''Citations,'' ''Special rules,'' and ''Critical habitat'' columns are for informational purposes only.

(1) ''Historic range'' column: The ''Historic range'' column indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. The ''Historic range'' column is nonregulatory and does not imply any application, or limitation of application, of the prohibitions of the Act or implementing regulations. Such prohibitions apply to all individuals of the listed species, as defined by the regulatory columns.

(2) ''Citations'' column: The ''Citations'' column contains the volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species was listed or reclassified, a rule was promulgated under section 4(d) of the Act, or an experimental population was established under section 10(j) of the Act. At least since 1973, these documents have included a statement indicating the basis for the listing, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the list in paragraph (h) of this section. The ''Citations'' column replaces the ''When listed'' column and its footnotes used in the tables in pre-2008 publications of this list.

(3) ''Special rules'' and ''Critical habitat'' columns: The ''Special rules'' and ''Critical habitat'' columns provide cross-references to other sections in part 17 or parts 222, 223, or 226 of chapter II of this title where critical habitat and special rules are found. The ''Special rules'' column also describes experimental populations and indicates whether they are essential or nonessential. Experimental populations are a separate listing, with one of the following symbols in the ''Status'' column: ''XE'' for an essential experimental population and ''XN'' for a nonessential experimental population. The term ''NA'' (not applicable) appearing in the ''Special rules'' or ''Critical habitat'' column indicates that there are no special rules or critical habitat for that particular species. However, all other appropriate rules in part 17, parts 217–226 of chapter II, and part 402 of chapter IV of this title still apply to that species. In addition, other rules in this title could relate to such species (for example, port-of-entry requirements). We make no claim that the ''Special rules'' column includes references to all the regulations of the Services that might apply to the species, or that it includes applicable regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS and standard references adopted for CITES. ITIS is an authoritative taxonomic database (*http://www.itis.gov*) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. CITES is an international agreement among member countries to ensure that international trade in specimens of wild animals and plants does not threaten their survival (see also 50 CFR part 23).

(h) The ''List of Endangered and Threatened Wildlife'' is provided below:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Common name [ESU or DPS]	Scientific name						

* * * * *

3. Amend §17.12 by revising paragraphs (a) through (g), and the introductory text and the column headings in the List of Endangered and Threatened Plants in paragraph (h), to read as follows:

§ 17.12 Endangered and threatened plants.

(a) The list in paragraph (h) of this section contains the names of all plant species determined by the Services to be endangered or threatened. It also contains the names of plant species treated as endangered or threatened because they are similar in appearance to and may be confused with endangered or threatened species (see § 17.50 *et seq.*). The ''Common name,'' ''Scientific name,'' and ''Status'' columns provide regulatory information; together, they define the plant species within the meaning of the Act. The listing of a particular taxon includes all lower taxonomic units (see §17.11(a) for an example).

(b) ''Scientific name'' column: The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Scientific name'' column. The Services will rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) to determine a species' scientific name. ITIS incorporates the naming principles established by the International Code of Botanical Nomenclature. For details, see paragraph (g) of this section. If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature will be provided in brackets ''[ ]'' within the ''Scientific name'' column following the ITIS nomenclature.

(c) ''Common name'' column: Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Common name'' column.

(d) ''Status'' column: Within the ''Status'' column, the following abbreviations are used:

Abbreviation	Regulatory Status the Abbreviation Represents
E	Endangered
T	Threatened
E (S/A)	Endangered based on similarity of appearance to an existing endangered species
T (S/A)	Threatened based on similarity of appearance to an existing threatened species
XE	Essential experimental population
XN	Nonessential experimental population

(e) ''Where listed'' column: The ''Where listed'' column sets forth the geographic area where the species is listed for purposes of the Act. The term ''Entire'' is defined as ''Wherever found.''

(f) The ''Historic range'', ''Citations'', ''Special rules'', and ''Critical habitat'' columns are for informational purposes only.

(1) ''Historic range'' column: The ''Historic range'' column indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. The ''Historic range'' column is nonregulatory and does not imply any application, or limitation of application, of the prohibitions in the Act or implementing regulations. Such prohibitions apply to all individuals of the listed species, wherever found.

(2) ''Citations'' column: The ''Citations'' column contains the volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species was listed or reclassified, a rule was promulgated under section 4(d) of the Act, or an experimental population was established under section 10(j) of the Act. At least since 1973, these documents have included a statement indicating the basis for the listing, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the list in paragraph (h) of this section. The ''Citations'' column replaces the ''When listed'' column and its footnotes used in the tables in pre-2008 publications of this list.

(3) ''Special rules'' and ''Critical habitat'' columns: The ''Special rules'' and ''Critical habitat'' columns provide cross-references to other sections in part 17 or parts 222, 223, or 226 of chapter II of this title where critical habitat and special rules are found. The ''Special rules'' column also describes experimental populations and indicates whether they are essential or nonessential. Experimental populations are a separate listing, with one of the following symbols in the ''Status'' column: ''XE'' for an essential experimental population and ''XN'' for a nonessential experimental population. The term ''NA'' (not applicable) appearing in the ''Special rules'' or ''Critical habitat'' column indicates that there are no special rules or critical habitat for that particular species. However, all other appropriate rules in parts 17, parts 217–226 of chapter II, and part 402 of chapter IV of this title still apply to that species. In addition, there may be other rules in this title that relate to such species (for example, port-of-entry requirements). We make no claim that the ''Special rules'' column includes references to all the regulations of the two Services that might apply to the species, or that it includes applicable regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS and standard references adopted for CITES. ITIS is an authoritative taxonomic database (*http://www.itis.gov*) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. CITES is an international agreement among member countries to ensure that international trade in specimens of wild animals and plants does not threaten their survival (see also 50 CFR part 23).

(h) The ''List of Endangered and Threatened Plants'' is provided below:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Scientific name	Common name						

* * * * *

Dated: July 16, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–17533 Filed 8–4–08; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 73, No. 151

Tuesday, August 5, 2008

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

Forest Service

Eastern Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of request for nominations for Eastern Region Recreation Resource Advisory Committee.

SUMMARY: Nominations are being sought for certain positions to serve on the Recreation Resource Advisory Committee (Recreation RAC) operating in the Eastern Region of the Forest Service. New members will be appointed by the Secretary of Agriculture (Secretary) and serve three-year terms. Appointments will begin in February 2009 when current member appointments expire.

One member is being sought to represent each of the following interests: (1) Summer Motorized Recreation, (2) Hunting/Fishing, (3) Non-motorized Outfitters/Guides, (4) Motorized Outfitters/Guides or Local Environmental Groups, (5) Affected Indian Tribes, and (6) Affected Local Governments.

The public is invited to submit nominations for membership on the Recreation RAC. Current members who have only served one term may also apply. Application packets for Recreation RACs can be obtained from the Forest Service Eastern Regional Office listed below or on the Web at *http://www.fs.fed.us/passespermits/rrac-application.shtml*. All nominations must include a completed application packet that includes background information and other details that address a nominee's qualifications.

DATES: All applications must be received by the Eastern Regional Office on or before September 30, 2008. This timeframe may be extended if officials do not receive applications for needed positions.

ADDRESSES: You may submit nominations to the Eastern Region Recreation RAC to: Marcia Heymen, Eastern Regional Office, 626 E. Wisconsin Ave., Milwaukee, WI 53202, (414) 297–3662.

FOR FURTHER INFORMATION: Anyone wanting further information regarding this request for nominations may contact the designated federal official: Cheryl Chatham, Recreation RAC DFO, PO Box 1270, Hot Springs, AR 71902, (501) 321–5277.

SUPPLEMENTARY INFORMATION:

Background

The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and the Bureau of Land Management (BLM) provide Recreation RACs with an opportunity to make recommendations to the two agencies on certain types of proposed recreation fee changes.

REA allows the agencies to use existing advisory councils, such as BLM Resource Advisory Councils (RACs), or to establish new committees as appropriate. The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. In 2006, the Forest Service chartered new Recreation RACs for the states of California and Colorado, and for the Forest Service Pacific Northwest, Eastern and Southern Regions. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota. In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their State be exempt from the REA–R/RAC requirement, and the two Departments concurred with the exemptions.

Members were appointed to the Eastern Recreation RAC in February 2007 for either two year or three-year terms. The terms for the two-year members will expire February 2009.

The Eastern Recreation RAC provides recreation fee recommendations to the Forest Service. The Recreation RAC makes recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation RAC Composition

The Recreation RAC consists of 11 members appointed by the Secretary. For purposes to better serve public recreation activities in the Eastern Region, two members were selected to serve in the Local Environmental Group category and no members were appointed for Motorized Outfitters and Guides. These members provide a broad and balanced representation from the recreation community as follows:

(1) Five persons who represent recreation users and that include, as appropriate, the following:

a. Winter motorized recreation, such as snowmobiling;

b. Winter non-motorized recreation, such as snowshoeing, cross-country and downhill skiing, and snowboarding;

c. Summer motorized recreation, such as motorcycles, boats, and off-highway vehicles;

d. Summer non-motorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting; and

e. Hunting and fishing;

(2) Three persons who represent interest groups that include, as appropriate, the following:

a. Motorized outfitters and guides;

b. Non-motorized outfitters and guides; and

c. Local environmental groups.

(3) Three persons, as follows:

a. State tourism official to represent the State;

b. A person who represents affected Indian tribes; and

c. A person who represents affected local government interests.

Nomination Information

Any individual or organization may nominate one or more qualified persons to represent the interests listed above to serve on the Recreation RAC. To be considered for membership, nominees must:

- Identify what interest group they would represent and how they are qualified to represent that group;
- State why they want to serve on the committee and what they can contribute;
- Show their past experience in working successfully as part of a collaborative group; and

• Complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

Letters of recommendation are welcome, but not required. Individuals may also nominate themselves. Nominees do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service-managed lands are located.

Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by contacting the Eastern Region. Nominees must submit all documents to the appropriate regional contact. Additional information about recreation fees and REA is available at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml.*

The Forest Service will also work with Governors and county officials to identify potential nominees.

The Forest Service will review the applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. An alternate will become a participating member of the Recreation RAC only if the member for whom the alternate is appointed to replace leaves the committee permanently.

Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings. All Recreation RAC meetings are open to the public aid an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: July 29, 2008.

Cheryl Chatham,

Designated Federal Official.

[FR Doc. E8–17781 Filed 8–4–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of request for nominations for the Southern Region Recreation Resource Advisory Committee.

SUMMARY: Nominations are being sought for certain positions to serve on the Recreation Resource Advisory Committee (Recreation RAC) operating in the Southern Region of the Forest Service. New members will be appointed by the Secretary of Agriculture (Secretary) and serve three-year terms. Appointments will begin in February 2009 when current member appointments expire.

One member is being sought to represent each of the following interests: (1) Camping; (2) Motorized Recreation; (3) Hunting/Fishing; (4) Outfitters/Guides #1; (5) Outfitters/Guides #2; (6) Affected Indian Tribes; and (7) Affected Local Governments.

The public is invited to submit nominations for membership on the Recreation RAC. Current members who have only served one term may also apply. Application packets for Recreation RACs can be obtained on the Web at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by e-mailing: *r8_rrac@fs.fed.us.* Interested parties may also contact Caroline Mitchell, U.S. Forest Service, PO Box 1270, Hot Springs, AR 71902 (501–321–5318).

All nominations must consist of a completed application packet that includes background information and other information that addresses a nominee's qualifications.

DATES: All applications must be received by the appropriate office listed below on or before September 30, 2008. This timeframe may be extended if officials do not receive applications for needed positions.

ADDRESSES: Interested persons may submit nominations to the Southern Region Recreation RAC by U.S. Mail: C. Mitchell, Ouachita National Forest, PO Box1270, Hot Springs, AR 71902, or Express Delivery: C. Mitchell, Ouachita National Forest, 100 Reserve Street, Hot Springs, AR 71901.

FOR FURTHER INFORMATION: Anyone wanting further information regarding this request for nominations may contact the designated federal official: Cheryl Chatham, Recreation RAC DFO, PO Box 1270, Hot Springs, AR 71902 (501–321–5277).

SUPPLEMENTARY INFORMATION:

Background

The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and the Bureau of Land Management (BLM) provide Recreation RACs with an opportunity to make recommendations to the two agencies on certain types of proposed recreation fee changes.

REA allows the agencies to use existing advisory councils, such as BLM Resource Advisory Councils (RACs), or to establish new committees as appropriate. The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. In 2006, the Forest Service chartered new Recreation RACs for the states of California and Colorado, and for the Forest Service Pacific Northwest, Eastern and Southern Regions. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota.

In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their State be exempt from the REA–R/RAC requirement, and the two Departments concurred with the exemptions.

Members were appointed to the Southern Recreation RAC in February 2007 for either two year or three-year terms. The terms for the two-year members will expire February 2009.

The Recreation RACs provide recreation fee recommendations to both the Forest Service and the Bureau of Land Management (BLM). These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation RAC Composition

Each Recreation RAC consists of 11 members appointed by the Secretary. REA provided flexibility to modify the specified membership of the RAC ''as appropriate'' to ensure a fair and balanced representation of recreation interests. Due to climate conditions in the Southern Region, the Region does not have a winter sports program. Therefore, the categories of winter motorized recreation and winter non-motorized recreation were replaced with (1) camping and (2) wildlife viewing/visiting interpretive sites. In addition, as the region has very few motorized outfitters and guides, they have two positions representing non-motorized outfitter and guides. The positions are as follows:

(1) Five persons who represent recreation users and that include, as appropriate, the following:

a. Camping interests;

b. Day-use interests, such as wildlife viewing and interpretive centers;

c. Summer motorized recreation, such as motorcycles, boats, and off-highway vehicles;

d. Summer non-motorized recreation, such as backpacking, horseback riding,

mountain biking, canoeing, and rafting; and

e. Hunting and fishing;

(2) Three persons who represent interest groups that include, as appropriate, the following:

a. Non-motorized outfitters and guides-position one;

b. Non-motorized outfitters and guides-position two; and

c. Local environmental groups.

(3) Three persons, as follows:

a. State tourism official to represent the state;

b. A person who represents affected Indian tribes; and

c. A person who represents affected local government interests.

Nomination Information

Any individual or organization may nominate one or more qualified persons to represent the interests listed above to serve on the Recreation RAC. To be considered for membership, nominees must:

- Identify what interest group they would represent and how they are qualified to represent that group;
- State why they want to serve on the committee and what they can contribute;
- Show their past experience in working successfully as part of a collaborative group; and
- Complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

Letters of recommendation are welcome, but not required. Individuals may also nominate themselves. Nominees do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service-managed lands are located.

Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by contacting the Southern Region as identified in this notice. Nominees must submit all documents to the appropriate regional contact. Additional information about recreation fees and REA is available at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml.*

The Forest Service will also work with Governors and county officials to identify potential nominees.

The Forest Service will review the applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. An alternate will become a participating member of the Recreation RACs only if the member for whom the alternate is appointed to replace leaves the committee permanently.

Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings. All Recreation RAC meetings are open to the public and an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: July 29, 2008.

Cheryl Chatham,

Designated Federal Official.

[FR Doc. E8–17783 Filed 8–4–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Taiwan with respect to three companies. Only one respondent, Chia Far Industrial Factory Co., Ltd. (Chia Far), is participating in this review. The period of review (POR) is July 1, 2006, through June 30, 2007.

We preliminarily determine that Chia Far made sales below normal value (NV).

If the preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Henry Almond, AD/CVD Operations, Office 2, Import Administration–Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone:(202) 482–0049.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the antidumping duty order on SSSSC from Taiwan. *See Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan, and South Korea*, 64 FR 40555 (July 27, 1999) (*SSSSC Order*). On July 3, 2007, the Department published in the **Federal Register** a notice of opportunity to request administrative review of the antidumping duty order on SSSSC from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On July 31, 2007, the petitioners[1] submitted a timely request for the Department to conduct an administrative review of the sales of SSSSC made during the POR by Chain Chon Industrial Co., Ltd.; Chia Far; Chien Shing Stainless Co.; China Steel Corporation; Emerdex Stainless Flat–Rolled Products, Inc.; Emerdex Stainless Steel, Inc.; Emerdex Group; Goang Jau Shing Enterprise Co., Ltd.; PFP Taiwan Co. Ltd.; Ta Chen Stainless Pipe Co., Ltd. (Ta Chen); Tang Eng Iron Works; Yieh Loong Enterprise Co., Ltd. (also known as Chung Hung Steel Co., Ltd.); Yieh Trading Corp. (also known as Yieh Corp.); Yieh Mau Corp.; and Yieh United Steel Corporation (YUSCO), pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). On August 24, 2007, the Department published a notice of initiation of administrative review covering each of these 15 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613, 48614 (Aug. 24, 2007).

In October 2007, the petitioners withdrew their request for administrative review with respect to the following 12 companies: China Steel Corporation; Emerdex Stainless Flat Rolled Products, Inc.; Emerdex Stainless Steel, Inc.; Emerdex Group; Tang Eng Iron Works; PFP Taiwan Co., Ltd.; Yieh Loong Enterprise Co., Ltd. (aka Chung Hung Steel Co., Ltd.); Yieh Trading Corp.; Goang Jau Shing Enterprise Co., Ltd.; Yieh Mau Corp.; Chien Shing Stainless Co.; and Chain Chon Industrial Co., Ltd. Subsequently, also in October 2007, the Department issued its quantity

[1] The petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, United Auto Workers Local 3303, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

and value (Q&V) questionnaire to Chia Far, Ta Chen, and YUSCO, the remaining three companies for which a review was requested. We received Chia Far's response to the Q&V questionnaire, as well as certification of no shipments from YUSCO and Ta Chen, on October 26, 2007, and October 29, 2007, respectively.

In November 2007, the Department issued the antidumping duty questionnaire to Chia Far. In December 2007, we received Chia Far's response to section A of the questionnaire (*i.e.*, the section regarding general information), as well as its response to sections B through D of the questionnaire (*i.e.*, the sections regarding sales and cost data).

Also in December 2007, we issued a letter to Ta Chen requesting that it reconcile its claim that it did not ship subject merchandise to the United States during the POR with information the Department obtained from CBP. Ta Chen responded to our request for information regarding its POR shipments in January 2008.

In March 2008, we published a notice rescinding the administrative review with respect to the 12 companies named above based on the petitioners' timely withdrawal of the review requests. *See Stainless Steel Sheet and Strip in Coils from Taiwan; Partial Rescission of Antidumping Duty Administrative Review and Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 16264 (Mar. 27, 2008).

In April and May 2008, we issued supplemental questionnaires covering sections A through D to Chia Far. We received Chia Far's responses to the supplemental questionnaires in May and June 2008.

Period of Review

The POR is July 1, 2006, through June 30, 2007.

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: 1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, 2) sheet and strip that is cut to length, 3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), 4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and 5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Also excluded from the scope of the order are certain specialty stainless steel products described below. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in

electronic sensors and is currently available under proprietary trade names such as Arnokrome III.[2]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as Gilphy 36.[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of the order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as Durphynox 17.[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as GIN4 Mo. The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is GIN5 steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, GIN6.[6]

Preliminary Partial Rescission of Review

As noted in the ''Background'' section above, two respondents, Ta Chen and YUSCO, certified to the Department that they had no shipments/entries of subject merchandise into the United States during the POR. The Department subsequently confirmed with CBP the no–shipment claim made by YUSCO. *See* the August 31, 2007, Memorandum to The File from Nichole Zink, Analyst, entitled, ''2006–2007 Administrative Review of Stainless Steel Sheet and Strips in Coils from Taiwan: Entry Information from U.S. Customs and Border Protection (CBP)'' (CBP Memo). Because the evidence on the record indicates that YUSCO did not export subject merchandise to the United States during the POR, we preliminarily determine it is appropriate to rescind the review for YUSCO, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice. *See*, *e.g.*, *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp 2d 1344, 1374 (2004); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005) (*Rebar from Turkey*); and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190, 35191 (June 29, 1998) (*Pipe and Tube from Turkey*).

Regarding Ta Chen, CBP information indicated that this company may have had shipments or entries of subject merchandise during the POR. *See* the CBP Memo. Based on the CBP information, on December 14, 2007, we requested that Ta Chen reconcile its no–shipment claim with information contained in the CBP memo. On January 7, 2008, Ta Chen responded to our request for information explaining that the entries at issue are not subject merchandise because they are not of coiled product. After reviewing the CBP data, and the documents provided by Ta Chen in its January 7 submission, including invoices, mill test reports, and shipping documents, we preliminarily determine that Ta Chen's POR entries were not subject merchandise as defined by the scope of the order. Specifically, the order only covers products in coils, and the evidence submitted by Ta Chen shows that the entries in question were of stainless steel strip that was cut–to-length, and not in coils. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are also preliminarily rescinding our review with respect to Ta Chen. *See*, *e.g.*, *Rebar From Turkey*, 70 FR at 67666; *Pipe and Tube from Turkey*, 63 FR at 3519.

Affiliation

In the 2005–2006 administrative review, the most recently completed segment of this proceeding, we found Chia Far and Lucky Medsup Inc. (Lucky Medsup), one of Chia Far's U.S. reseller customers, to be affiliated under section 771(33) of the Act based upon: 1) a document demonstrating the existence of a principal–agent relationship; 2) Chia Far's degree of involvement in sales between Lucky Medsup and its customers, showing that for some sales Chia Far knew the identity of the end–customer before it set its price to Lucky Medsup; 3) the fact that Lucky Medsup only sold subject merchandise produced by Chia Far; and 4) the fact that Lucky Medsup did not maintain inventory of, or further manufacture, SSSSC. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 73 FR 6932 (Feb. 6, 2008), and accompanying Issues and Decision Memorandum at Comment 3 (*2005–2006 SSSSC from Taiwan Final Results*). This affiliation determination was consistent with the Department's

[2] Arnokrome III is a trademark of the Arnold Engineering Company.

[3] Gilphy 36 is a trademark of Imphy, S.A.

[4] Durphynox 17 is a trademark of Imphy, S.A.

[5] This list of uses is illustrated and provided for descriptive purposes only.

[6] GIN4 Mo, GIN5 and GIN6 are the proprietary grades of Hitachi Metals America, Ltd.

findings in prior administrative reviews of the antidumping duty order on SSSSC from Taiwan. *See, e.g., Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 75504 (Dec. 15, 2006); *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (Feb. 13, 2002), and accompanying Issues and Decision Memorandum at Comment 23 (upheld by the Court of International Trade (CIT) in *Chia Far Industrial Factory Co. Ltd. v. United States, et al.*, 343 F. Supp. 2d 1344, 1356 (CIT 2004)). *See also* the July 25, 2008, memorandum from Henry Almond, Analyst, to the file entitled, ''Placing Information Regarding the Principal–Agent Relationship between Lucky Medsup Inc. and Chia Far Industrial Factory Co., Ltd. on the Record of the 2006–2007 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan.''

In the instant administrative review, Chia Far has continued to argue that it is not affiliated with Lucky Medsup. Chia Far concedes that the relationship between the two companies has not changed from the prior reviews, except that the two have recently exchanged correspondence stating that the sole distribution relationship entered into in 1994 was terminated in 1995, and that Lucky Medsup has recently begun selling merchandise produced by other manufacturers. Notwithstanding the additional information provided by Chia Far, we preliminarily find that the manner in which Chia Far and Lucky Medsup conduct business between them has not materially changed from the previous review and we continue to find that Chia Far and Lucky Medsup are affiliated, in accordance with section 771(33) of the Act.

Chia Far acknowledges that, with the exception of the exchange of correspondence stating that the 1994 sole distributorship arrangement had been terminated in 1995, ''the pertinent facts with respect to that relationship have not changed between the two review periods.'' *See* Chia Far's December 3, 2007, submission at page 7. While Chia Far and Lucky Medsup may have exchanged a letter stating that the sole distributor relationship was terminated in 1995, this declaration has not changed the fact that these companies continue to operate in a principal–agent relationship. In *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa*, 62 FR 61084, 61089 (Nov. 14, 1997), the Department stated that even in the absence of an explicit agreement, where there exists a principal who has the potential to control pricing and/or the terms of sale through the end–customer, the Department will find agency and thus affiliation. The letter purporting to establish the date that the sole distributorship relationship was terminated was submitted for the purposes of this proceeding and was not a document generated in the ordinary course of business from the applicable time period. Given that this letter was not produced in the ordinary course of business, and in light of other evidence on the record, specifically the fact that the functional relationship between the two companies has not changed, we have preliminarily determined not to place great weight on the letter. Additionally, there is no other evidence on the record of this administrative review that indicates the principal–agent relationship found in prior reviews does not continue to exist in this review. Those conditions established: 1) Chia Far's degree of involvement in sales between Lucky Medsup and its customers; 2) that Chia Far knew the identity of Lucky Medsup's customers, and the customers were aware Chia Far was the supplier; 3) that Lucky Medsup operated as a ''go–through'' that did not maintain any inventory or further manufacture products; and 4) that, with the exception of one transaction involving non–subject merchandise, all of the products sold by Lucky Medsup during the POR were subject merchandise produced or exported by Chia Far.

Section 771(33) of the Act states that for purposes of affiliation, ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over that person.'' The Department's regulations further provide that ''{t}he Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.'' *See* 19 CFR 351.102(b). Because the relationship between the companies has not changed, as conceded by Chia Far, including the fact that Chia Far supplied all of the subject merchandise sold by Lucky Medsup during the POR, we continue to find for purposes of these preliminary results that Chia Far is affiliated with Lucky Medsup because Chia Far is in a position to exercise restraint or direction over Lucky Medsup.

Identifying Home Market Sales

Section 773(a)(1)(B) of the Act defines NV as the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP). In implementing this provision, the CIT has found that sales should be reported as home market sales if the producer ''knew or should have known that the merchandise {it sold} was for home consumption based upon the particular facts and circumstances surrounding the sales.'' *See Tung Mung Dev. Co v. United States*, 25 CIT 752, 783 (2001) (quoting *INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251 (1997)). Where a respondent has no knowledge as to the destination of subject merchandise, except that it is for export, the Department will classify such sales as export sales and exclude them from the home market sales database. *See Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Flat Products, Certain Corrosion–Resistant Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37182–37183 (July 9, 1993).

In its December 21, 2007, questionnaire response, Chia Far stated that it shipped some of the SSSSC it sold to home market customers during the POR to a container yard or it placed the SSSSC in an ocean shipping container at the home market customer's request. The Department has preliminarily determined that, based on the fact that these sales were sent to a container yard or placed in a container by Chia Far at the request of the home market customer, Chia Far should have known that the SSSSC in question was not for consumption in the home market. Therefore, consistent with this determination, the Department has preliminarily excluded these sales from Chia Far's home market sales database. This treatment is consistent with our practice in prior administrative reviews of this order. *See, e.g., Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 72 FR 43236, 43241 (Aug. 3, 2007) (*2005–2006 SSSSC from Taiwan Preliminary Results*), unchanged in *2005–2006 SSSSC from*

Taiwan Final Results, 73 FR 6932 (Feb. 6, 2008).

Comparisons to Normal Value

In order to determine whether Chia Far sold SSSSC to the United States at prices less than NV, the Department compared the EP and CEP of individual U.S. sales to the monthly weighted–average NV of sales of the foreign like product made in the ordinary course of trade. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order that were produced by the same person and in the same country as the subject merchandise, and sold by Chia Far in the comparison market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to SSSSC sold in the United States.

During the POR, Chia Far sold subject merchandise and foreign like product that it made from hot- and cold–rolled stainless steel coils (products covered by the scope of the order) purchased from unaffiliated parties. Chia Far further processed the hot- and cold–rolled stainless steel coils by performing one or more of the following procedures: cold–rolling, bright annealing, surface finishing/shaping, and slitting. We did not consider Chia Far to be the producer of the merchandise under review if it performed only insignificant processing on the coils (*e.g.*, annealing, slitting, surface finishing). *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (Dec. 14, 2004), and accompanying Issues and Decision Memorandum at Comment 4 (listing painting, slitting, finishing, pickling, oiling, and annealing as minor processing for flat–rolled products). Furthermore, we did not consider Chia Far to be the producer of the cold–rolled products that it sold if it was not the first party to cold–roll the coils. The cold–rolling process changes the surface quality and mechanical properties of the product and produces useful combinations of hardness, strength, stiffness, and ductility. Stainless steel cold–rolled coils are distinguished from hot–rolled coils by their reduced thickness, tighter tolerances, better surface quality, and increased hardness which are achieved through cold–rolling. Chia Far's subsequent cold–rolling of the cold–rolled coils that it purchased may have modified these characteristics to suit the needs of particular customers; however, it did not impart these defining characteristics to the finished coils. Thus, we considered the original party that cold–rolled the product to be its producer.

Product Comparisons

The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the month in which the first U.S. sale was made until two months after the month in which the last U.S. sale was made. *See* 19 CFR 351.414(e)(2). Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Chia Far in the following order of importance: grade, hot- or cold–rolled, gauge, surface finish, metallic coating, non–metallic coating, width, temper, and edge.

Export Price and Constructed Export Price

The Department based the price of Chia Far's U.S. sales of subject merchandise on EP or CEP, as appropriate. Specifically, when Chia Far sold subject merchandise to unaffiliated purchasers in the United States prior to importation and CEP was not otherwise warranted based on the facts of the record, we based the price of the sale on EP, in accordance with section 772(a) of the Act. When Chia Far sold subject merchandise to unaffiliated purchasers in the United States through its U.S. affiliate, Lucky Medsup, we based the price of the sale on CEP, in accordance with section 772(b) of the Act.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, container handling charges, harbor maintenance fees, and certificate–of-origin fees in, accordance with section 772(c)(2)(A) of the Act.

We based CEP on packed prices sold to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, container handling expenses, foreign harbor construction expenses, international freight expenses, marine insurance expenses, U.S. duty expenses, U.S. brokerage and handling expenses, other U.S. transportation expenses, and harbor maintenance fees, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted from CEP those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank fees, and warranties) and indirect selling expenses.

In addition, we deducted from the CEP starting price an amount for CEP profit (profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) of the Act), in accordance with sections 772(d)(3) and 772(f) of the Act. We computed profit by deducting from the total revenue realized on sales in both the U.S. and home markets all expenses associated with those sales. We then allocated profit to the expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of Chia Far's home market sales of the foreign like product is more than five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in the respondent's home market.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length*

Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[7] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1313–14 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from Chia Far regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Chia Far for each channel of distribution. Chia Far reported that it made EP sales in the U.S. market to distributors, as well as CEP sales to Lucky Medsup. Chia Far reported identical selling activities in selling to its unaffiliated U.S. customers as it did in selling to its affiliate, Lucky Medsup. We examined the selling activities performed for both channels and found that Chia Far performed the following types of selling activities equally in selling to its unaffiliated U.S. customers and to Lucky Medsup: 1) price negotiation and communication with the customer; 2) arranging for freight and the provision of customs clearance/brokerage services (where necessary); and 3) provision of general technical advice (where necessary) and quality assurance–related activities, including warranty services. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; and 3) inventory maintenance and warehousing; and, 4) warranty and technical support. Accordingly, we find that Chia Far performed sales and marketing, freight and delivery services, and warranty and technical support services for U.S. sales. Because the level of Chia Far's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Chia Far reported that it made sales to distributors and end users. We examined the selling activities performed for home market sales and found that Chia Far performed the following types of selling activities equally for sales to distributors and end users: 1) price negotiation and communication with the customer; 2) arranging for freight (where necessary); 3) provision of general technical advice (where necessary) and quality assurance–related activities, including providing warranty services and rebates; and 4) post–sale warehousing/processing on request. Accordingly, based on the selling functions analysis described above, we find that Chia Far performed sales and marketing, freight and delivery services, warranty and technical support services, and inventory maintenance and warehousing for home market sales. Consequently, we preliminarily determine that there is one LOT in the home market for Chia Far.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, although Chia Far performed occasional warehousing and post–sale processing functions in the home market that it did not perform on sales to the United States, we do not find these differences to be material selling function distinctions significant to warrant a separate LOT for purposes of these preliminary results. Thus, we determine that the NV LOT for Chia Far is the same as the U.S. LOT for Chia Far.

Regarding the CEP–offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for Chia Far.

C. Cost of Production Analysis

In the 2005–2006 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, the Department determined that Chia Far sold the foreign like product at prices below the cost of producing the product and excluded such sales from the calculation of NV. *See 2005–2006 SSSSC from Taiwan Final Results*, 73 FR at 6935. As a result, the Department initiated an investigation to determine whether Chia Far made home market sales during the POR at prices below their COPs. *See* section 773(b)(2)(A)(ii) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each foreign like product sold by Chia Far during the POR, we calculated a weighted–average COP based on the sum of the respondent's materials and fabrication costs, G&A expenses, and financial expenses.

For the cost of SSSSC not produced by Chia Far, as in prior segments of this proceeding, we used, as facts available, Chia Far's costs to produce merchandise with characteristics identical or similar to the characteristics of the merchandise not produced by Chia Far. *See 2005–2006 SSSSC from Taiwan Preliminary Results*, 72 FR at 43224, unchanged in *2005–2006 SSSSC from Taiwan Final Results*, 73 FR 6932. We find that the percentage of Chia Far's U.S. sales accounted for by this merchandise is not significant. However, in future segments of this proceeding, if the proportion of merchandise produced by other manufacturers becomes significant, we may request that Chia Far provide cost data from its unaffiliated supplier.

For further information, see the July 30, 2008, Memorandum to the File from Henry Almond entitled, ''Sales Calculation Adjustments for Chia Far Industrial Factory Co., Ltd. (Chia Far) for the Preliminary Results.''

2. Test of Comparison–Market Sales Prices

In order to determine whether sales were made at prices below the COP on a product–specific basis, we compared the Chia Far's weighted–average COP to the prices of its home market sales of foreign like product, as required under

[7] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: 1) in substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Chia Far's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Chia Far's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in ''substantial quantities'' within an extended period of time (*i.e.*, one year) pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on our comparison of POR average costs to reported prices, we also determined, in accordance with section 773(b)(2)(D) of the Act, that these sales were not made at prices which would permit recovery of all costs within a reasonable period of time. As a result, we disregarded the below–cost sales of that product.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Chia Far on prices to unaffiliated customers in the home market. We made deductions from the starting price, where appropriate, for billing adjustments and rebates. We also made deductions from the starting price for foreign inland freight expenses under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c) for differences in credit expenses, bank fees, and warranties.

We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following weighted–average dumping margin exists for the respondent for the period July 1, 2006, through June 30, 2007:

Manufacturer/Exporter	Percent Margin
Chia Far Industrial Factory Co., Ltd.	2.71

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Chia Far, we will calculate importer–specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. *See* 19 CFR 351.106(c)(1). 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 this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for Chia Far will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case no cash

deposit will be required; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the initial less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the all others rate made effective by the LTFV investigation. *See SSSSC Order*, 64 FR at 40557. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–17935 Filed 8–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Ohio State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08–027. Applicant: The Ohio State University, Columbus, OH 43210. Instrument: Electron Microscope, Model Helios 600. Manufacturer: FEI Company/Phillips Electron Optics, The Netherlands. Intended Use: See notice at 73 FR 37408, July 1, 2008.

Docket Number: 08–029. Applicant: Vanderbilt University, Nashville, TN 37232–8725. Instrument: Electron Microscope, Model Tecnai G2 F20 TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 72 FR 37408, July 1, 2008.

Docket Number: 08–030. Applicant: University of Washington, Seattle, WA 98195. Instrument: Electron Microscope, Model Tecnai G2 F20 S–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 72 FR 34708, July 1, 2008.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 25, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–17723 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Judy Lao, Import Administration, International Trade Administration, U.S. Department of Commerce (the Department), 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8029 or (202) 482–7924, respectively.

Amendment to Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on June 13, 2008, the Department made a final determination of sales at less than fair value (LTFV) in the investigation of light-walled rectangular pipe and tube from Mexico. The final determination was subsequently released to all parties in the proceeding, and published in the **Federal Register** on June 24, 2008. *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008) (Final Determination). On June 23, 2008, and pursuant to 19 CFR 351.224(c)(2), we received timely-filed allegations from respondents, Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey SA. de C.V. (PROLAMSA), that the Department made ministerial errors with respect to its final dumping margin calculations for both companies. *See* Letter from Maquilacero S.A. de C.V. to the Department of Commerce, regarding ''Ministerial Error Comments,'' dated June 23, 2008 (Maquilacero Ministerial Letter); *see also* Letter from Productos Laminados de Monterrey S.A. de C.V., regarding ''Ministerial Error Comments,'' dated June 23, 2008 (PROLAMSA Ministerial Letter). On June 25, 2008, we received comments from petitioners regarding the ministerial errors alleged by PROLAMSA. *See* Letter from Petitioners to the Department, regarding the ministerial errors alleged by PROLAMSA, dated June 25, 2008.

After analyzing respondents' ministerial error comments, we have determined, in accordance with 19 CFR 351.224(e), that we made the following ministerial errors with respect to our final dumping margin calculations for Maquilacero and PROLAMSA.

Maguilacero

The Department has revised its margin calculation for Maquilacero with regard to certain expense adjustments. Specifically, the Department inadvertently did not adjust the comparison and U.S. market net prices for certain expenses reported in Maquilacero's sales databases, *i.e.*, maqhm06b and maqus06b.[1] *See*

[1] The Department verified these adjustments during its verification of Maquilacero's comparison and U.S. market sales. *See Verification of the Sales Responses of Maquilacero S.A. de C.V in the Antidumping Investigation of Light-Walled*

Maquilacero Ministerial Letter. The Department has revised its calculation of both the comparison and U.S. market net prices to adjust for these expenses as intended. For a detailed discussion of the ministerial errors alleged by Maquilacero as well as the Department's analysis, *see* Memorandum from the Team to Richard O. Weible, entitled, ''Ministerial Error Allegation in the Final Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico: Maquilacero S.A. de C.V.,'' dated July 24, 2008. Correcting these errors results in a revised margin of 2.40 percent for Maquilacero as indicated in the ''Amended Cash Deposits'' section below.

PROLAMSA

The Department has revised its margin calculation for PROLAMSA, to correct for two errors. First, the Department inadvertently applied the incorrect scrap offset factor in calculating PROLAMSA's cost of direct materials in its final determination. Based on the Department's findings at verification, the Department recalculated PROLAMSA's variance factor to exclude the cost of direct materials for semi-finished products. *See* Memorandum from Gina K. Lee, Accountant, to the File, regarding ''Verification of the Cost Response of Prolamsa (A–201–836),'' dated April 15, 2008 (PROLAMSA Cost Verification Report) at 2, 19–20. However, the Department inadvertently applied the original scrap offset factor to calculate PROLAMSA's cost of direct materials net of scrap revenue (DMNET) for the final determination. *See* PROLAMSA Ministerial Letter at 2. The Department is, therefore, revising its calculation of DMNET to reflect the revised scrap offset factor, as intended. Second, because the Department has revised PROLAMSA's total cost of manufacturing as described above, the Department is consequently revising the calculation of PROLAMSA's inventory carrying costs during the period of investigation because these costs are based upon PROLAMSA's cost of manufacturing.

PROLAMSA further alleged a ministerial error with regard to the Department's calculation of its total cost of manufacturing. *See* PROLAMSA Ministerial Letter at 3–4. Specifically, PROLAMSA alleges that the Department made a mathematical calculation error by applying the adjusted variance factor to its total cost of manufacturing which includes an amount for the B–10 adjustment.[2] After reviewing PROLAMSA's allegation, we have determined that the alleged error is methodological in nature and, therefore, does not constitute a ministerial error within the meaning of 19 CFR 351.224(f). For a detailed discussion of the ministerial errors alleged by PROLAMSA as well as the Department's analysis, *see* Memorandum from the Team to Richard O. Weible, entitled, ''Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico: Productos Laminados de Monterrey S.A. de C.V.,'' dated July 24, 2008. Correcting the scrap offset factor and adjusting the calculation of PROLAMSA's inventory carrying costs to account for this correction, results in a revised margin for PROLAMSA of 5.12 percent as indicated in the ''Amended Cash Deposits'' section below.

Therefore, in accordance with 19 CFR 35 1.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of light-walled rectangular pipe and tube from Mexico for Maquilacero and PROLAMSA.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins and any margins determined entirely under section 776 of the Act. For this amended final determination, we have calculated amended margins for Maquilacero and PROLAMSA that are both above *de minimis* . Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all-others rate by weight averaging the rates of Maquilacero and PROLAMSA, because doing so risks disclosure of proprietary information.

Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the simple-average rate of the amended dumping margins calculated for Maquilacero and PROLAMSA, i.e., 3.76 percent.

Amended Cash Deposits

The revised weighted-average dumping margins are as follows:[3]

Manufacturer/exporter	Final determination weighted average	Amended final weighted average margin percentage
Maquilacero S.A. de C.V.	2.94	2.40
Productos Laminados de Monterrey S.A. de C.V.	5.73	5.12
Arco Metal S.A. de C.V.	4.33	3.76
Hylsa S.A. de C.V.	4.33	3.76
Internacional de Aceros, S.A. de C.V.	4.33	3.76
Perfiles y Herrajes LM, S.A. de C.V.	4.33	3.76
Regiomontana de Perfiles y Tubos	4.33	3.76
Talleres Acero Rey S.A. de C.V.	4.33	3.76
Tuberia Laguna, S.A. de C.V.	4.33	3.76
All-Others	4.33	3.76

Rectangular Pipe and Tube from Mexico, dated April 11, 2008.

[2] In the *Final Determination*, the Department increased the total cost of manufacturing for each product by the percentage difference between the subject merchandise variance percentage recalculated by the Department and the variance percentage previously reported by PROLAMSA. *See* ''Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico,'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 13, 2008. *See also* ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination: Productos Laminados de Monterrey S.A. de C.V.,'' memorandum from Gina K. Lee to Neal M. Halper, dated June 13, 2008.

[3] The Department determined an adverse facts available (AFA) rate of 11.50 percent in the final determination of sales at LTFV of this investigation for certain Mexican producers and/or exporters of LWR that were non-responsive to our requests for information. The Department based the AFA rate upon the highest estimated margin alleged in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008). We note that the AFA rate of 11.50 percent continues to apply for these companies.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of light-walled rectangular pipe and tube from Mexico. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This amended determination is issued and published pursuant to section 735(e) of the Act.

Dated: July 24, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–17719 Filed 8–4–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 23, 2008, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') for Dujiangyan Xingda Foodstuff Co., Ltd. (''Xingda''). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 73 FR 30054 (May 23, 2008) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*, but we did not receive any comments. Therefore, we made no changes to the dumping margin calculations for these final results.

EFFECTIVE DATE: August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* for this administrative review were published on May 23, 2008. In the *Preliminary Results*, the Department stated that interested parties were to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the time limit for filing case briefs. No interested party submitted a case or rebuttal brief.

Verification

The Department did not conduct verification in this new shipper review.

Hearing

No party requested a hearing for this new shipper review.

Period of Review

The period of review (''POR'') covers February 1, 2007, through July 31, 2007.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[1]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

In proceedings involving non–market (''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 deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that Xingda demonstrated its eligibility for separate rate status. We received no comments from interested parties regarding Xingda's separate rate status. In these final results of review, we continue to find that the evidence placed on the record of this review by Xingda demonstrates an absence of government control, both in law and in fact, with respect to Xingda's exports of the merchandise under review. Thus, we have determined that Xingda is eligible to receive a separate rate.

Analysis of Comments Received

No interested parties submitted comments for these final results.

Changes Since the Preliminary Results

We made no changes to the Preliminary Results.

Combination Rate

In new shipper reviews, the Department may, pursuant to 19 CFR 351.107(b), establish a combination cash deposit rate for each combination of the exporter and its supplying producer(s). *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 at 72140 (December 4, 2002), *Notice of Final Results of Antidumping Duty New Shipper Review: Certain In–Shell Raw Pistachios from Iran*, 68 FR 353 at 354 (January 3, 2003), and *Certain Forged Stainless Steel*

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[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum–Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

Flanges from India: Final Results of Antidumping Duty New Shipper Review, 68 FR 351 (January 3, 2002). The Department has determined that a combination rate is appropriate in this case, as Xingda is both the producer and exporter of the subject merchandise. Therefore, the Department will include in its cash deposit instructions to CBP appropriate language to enforce these final results of new shipper review on the basis of a combination rate involving Xingda as both the producer and exporter of the subject merchandise.

Final Results of Review

The Department has determined that the following margin exists during the period February 1, 2007, through July 31, 2007:

Exporter/Manufacturer	Weighted–Average Margin (Percentage)
Dujiangyan Xingda Foodstuff Co., Ltd.	0.00

Assessment Rates

Pursuant to these final results, the Department determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Xingda to CBP 15 days after the date of publication of these final results of new shipper review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer–specific (or customer) 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 importer–specific (or customer) assessment rate calculated in the final results of this review is above de minimis.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of the new shipper review for all shipments of subject merchandise by Xingda entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the ''Act''): (1) for subject merchandise produced and exported by Xingda, no cash deposit will be required; (2) for subject merchandise exported by Xingda, but not manufactured by Xingda, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Xingda, but exported by any party other than Xingda, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: July 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–17969 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836, A–570–914, A–580–859]

Light–Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light–Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the Commission), the Department is issuing antidumping duty orders on light–walled rectangular pipe and tube from Mexico, the People's Republic of China (the PRC), and the Republic of Korea (Korea). On July 28, 2008, the Commission notified the Department of its affirmative determination of material injury to a U.S. industry and its negative determination of critical circumstances. *See Light–Walled Rectangular Pipe and Tube from China, Korea and Mexico* (Investigation Nos. 731–TA–1118–1120 (Final), USITC Publication 4024, July 2008).

EFFECTIVE DATE: August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards (Mexico), Jeffrey Pedersen (the PRC), or Mark Flessner (Korea), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; tel.: (202) 482–8029, (202) 482–2769, or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2008, the Department published its final determinations of sales at less–than-fair–value in the antidumping duty investigations of light–walled rectangular pipe and tube from Korea, Mexico and the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 35655 (*Korea Final Determination*); *Notice of Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649; and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical*

Circumstances, in Part: Light–Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (*PRC Final Determination*) (all published June 24, 2008).

On July 7, 2008, Nexteel Co., Ltd. (Nexteel), respondent in the Korea investigation, timely alleged a single ministerial error for the *Korea Final Results. See* ''Amendment to the Korea Final Determination,'' below.

In response to timely allegations of ministerial errors filed by respondents Maquilacero S.A. de C.V. and Productos Laminados de Monterrey S.A. de C.V., an amended final determination with respect to the Mexico investigation was signed on July 24, 2008, but did not publish in the **Federal Register** prior to signing of the instant notice.

On July 28, 2008, the Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less–than-fair–value imports of subject merchandise from Korea, Mexico and the PRC.

Scope of the Orders

The merchandise subject to these orders is certain welded carbon quality light–walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to these orders is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Amendment to the Korea Final Determination

On July 7, 2008, Nexteel, the sole active respondent in the Korea investigation, timely alleged a single ministerial error in the *Korea Final Determination*. Nexteel contends that the Department inadvertently calculated the company's margin using an outdated cost of production (COP) database. Although the program references the correct database by name, Nexteel states, the actual cost data reflect an earlier superannuated version of Nexteel's cost data. Petitioners did not comment on Nexteel's allegation.

We have determined, in accordance with section 735(e) of the Act, that we did, in fact, make the error as alleged by Nexteel. As a result of substituting the correct COP database, the final determination dumping margin for Nexteel has changed from 1.30 percent to 0.92 percent. This correction does not affect Nexteel's exclusion from the antidumping duty order on light–walled rectangular pipe and tube from Korea, as Nexteel's margin remains de minimis. However, the all–others rate for the Korea investigation has changed from the 15.98 percent published in the *Korea Final Determination* to 15.79 percent.

Antidumping Duty Orders

On July 28, 2008, in accordance with section 735(d) of the Act, the Commission notified the Department of its final determination that the industry in the United States producing light–walled rectangular pipe and tube is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less–than-fair–value imports of subject merchandise from Korea, Mexico and the PRC.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of light–walled rectangular pipe and tube from Korea, Mexico and the PRC. These antidumping duties will be assessed on all unliquidated entries of light–walled rectangular pipe and tube entered, or withdrawn from warehouse, for consumption on or after January 30, 2008, the date on which the Department published its notices of preliminary determination in the **Federal Register**, with the exception of that merchandise produced by Nexteel Co., Ltd., which is excluded from the antidumping duty order on light–walled rectangular pipe and tube from Korea. *See* 19 CFR 351.204(e).

With regard to the negative critical circumstances determinations for the PRC, we will instruct CBP to lift suspension, release any bond or other security, and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after November 1, 2007, but before January 30, 2008 (*i.e.*, the 90 days prior to the date of publication of the preliminary determination in the **Federal Register** with respect to the PRC).

On or after the date of publication of the Commission's notice of final determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated dumping margins as noted below:

Country	Manufacturer/exporter	Weighted–Average Margin (percent)
Korea (weighted average)	Nexteel Co., Ltd.	0.92 (de minimis)
	Dong–A Steel Pipe Co. Ltd.	30.66
	HiSteel Co. Ltd.	30.66
	Jinbang Steel Co. Ltd.	30.66
	Joong Won	30.66
	Miju Steel Mfg. Co., Ltd.	30.66
	Yujin Steel Industry Co.	30.66
	Ahshin Pipe & Tube	30.66
	Han Gyu Rae Steel Co., Ltd.	30.66
	Kukje Steel Co., Ltd.	30.66
	SeAH Steel Corporation, Ltd.	15.79
	All others	15.79

Country	Manufacturer/exporter	Weighted–Average Margin (percent)
Mexico	Maquilacero S.A. de C.V.	2.40
	Productos Laminados de Monterrey S.A. de C.V.	5.12
	Arco Metal S.A. de C.V.	3.76
	Hylsa S.A. de C.V.	3.76
	Internacional de Aceros S.A. de C.V.	3.76
	Perfiles y Herrajes LM, S.A. de C.V.	3.76
	Regiomontana de Perfiles y Tubos	3.76
	Talleres Acero Rey S.A. de C.V.	3.76
	Tuberia Laguna S.A. de C.V.	3.76
	Industrias Monterrey S.A. de C.V.	11.50
	Nacional de Acero S.A. de C.V.	11.50
	PEASA–Productos Especializados de Acero	11.50
	Tuberias Aspe	11.50
	Tuberias y Derivados S.A. de C.V.	11.50
	All Others	3.76
People's Republic of China	Zhangjiagang Zhongyuan Pipe–Making Co., Ltd./ Zhangjiagang Zhongyuan Pipe–Making Co., Ltd..	264.64
	Kunshan Lets Win Steel Machinery Co., Ltd./ Kunshan Lets Win Steel Machinery Co., Ltd..	249.12
	Wuxi Baishun Steel Pipe Co., Ltd./ Wuxi Baishun Steel Pipe Co., Ltd..	249.12
	Guangdong Walsall Steel Pipe Industrial Co., Ltd./ Guangdong Walsall Steel Pipe Industrial Co., Ltd..	249.12
	Wuxi Worldunion Trading Co., Ltd./ Wuxi Hongcheng Bicycle Material Co., Ltd..	249.12
	Weifang East Steel Pipe Co., Ltd./Weifang East Steel Pipe Co., Ltd..	249.12
	Jiangyin Jianye Metal Products Co., Ltd./Jiangyin Jianye Metal Products Co., Ltd..	249.12
	PRC–Wide Rate	264.64

This notice constitutes the antidumping duty orders with respect to light–walled rectangular pipe and tube from Korea, Mexico and the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are issued and published in accordance with section 736(a) of Act and 19 CFR 351.211(b).

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18013 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing a countervailing duty order on light–walled rectangular pipe and tube (LWRP) from the People's Republic of China (PRC). On July 28, 2008, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Light–Walled Rectangular Pipe and Tube from China*, USITC Pub. 4024, Investigation Nos. 701–TA–449 and 731–TA–1118 (Final) (July 2008).

EFFECTIVE DATE: August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Damian Felton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189 and (202) 482–0133, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2008, the Department published its final determination in the countervailing duty investigation of LWRP from the PRC. *See Light Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008).

On July 28, 2008, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Light–Walled Rectangular Pipe and Tube from China*, USITC Pub. 4024, Investigation Nos. 701–TA–449 and 731–TA–1118 (Final) (July 2008).

Scope of the Order

The merchandise that is the subject of this order is certain welded carbon–quality light–walled steel pipe and tube, of rectangular (including square) cross section (LWR), having a wall thickness of less than 4mm.

The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30

percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Countervailing Duty Order

On July 28, 2008, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing LWRP is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of LWRP from the PRC.

Therefore, countervailing duties will be assessed on all unliquidated entries of LWRP from the PRC entered, or withdrawn from warehouse, for consumption on or after November 30, 2007, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**,[1] and before March 29, 2008, the date the Department instructed U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of LWRP made on or after March 29, 2008, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective March 29, 2008, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for LWRP from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below.

Exporter/Manufacturer	Net Subsidy Rate
Kunshan Lets Win Steel Machinery Co., Ltd. ...	2.17%
Zhangjiagang Zhongyuan Pipe–making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.	15.28 %
Qingdao Xiangxing Steel Pipe Co., Ltd. ...	200.58%
All Others	15.28%

This notice constitutes the countervailing duty order with respect to LWRP from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18016 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67703 (November 30, 2007).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ39

Unified Synthesis Product Development Committee

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Open Federal Advisory Committee Meeting.

SUMMARY: A major activity of the Climate Change Science Program (CCSP) is the production of a series of twenty-one Synthesis and Assessment Products (SAPs) that are designed to inform and aid decision making by policy makers, resource managers, stakeholders, the media, and the general public on issues related to global climate change. The Unified Synthesis Product (USP) Development Committee (USPDC), established by a Decision Memorandum on February 29, 2008, is the Federal Advisory Committee charged with responsibility to develop a draft USP that will synthesize the information contained in these 21 SAPs in the context of other recent climate and global change scientific studies and formal assessments.

DATES: The meeting will convene at 8 a.m. on Thursday, August 21, 2008 and adjourn at 5:30 p.m. on Friday, August 22, 2008. Meeting information will be available online on the USPDC website:

(*http://www.climate.noaa.gov/index.jsp?pg=./ccsp/unified_synthesis.jsp*).

Please note that meeting location, times, and agenda topics are subject to change.

ADDRESSES: The meeting will be held at the Erik Jonsson Center of the National Academies in Woods Hole, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher D. Miller, USPDC DFO and the Program Manager, NOAA/OAR/Climate Program Office, Climate Change Data and Detection Program Element, 1315 East-West Highway, Room 12239, Silver Spring, Maryland 20910; telephone 301–734–1241, e-mail: *Christopher.D.Miller@noaa.gov*.

SUPPLEMENTARY INFORMATION: *Status*: The meeting will be open to public participation and will include a 30-minute public comment period on August 21, 8 a.m. to 8:30 a.m. (check the USPDC website to confirm this time and the room in which the meeting will be held). In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received by the USPDC Designated Federal Official (DFO) by August 7, 2008 to provide sufficient time for review. Written comments received after August 7 will be distributed to the USPDC, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

Matters to be Considered: The USP author team will consider all peer review and public comments received during the USP First Draft review phase, which ends on August 14, 2008. The authors will decide how to address each comment, and plans for completion of the Final Draft of the USP will be developed.

Dated: July 29, 2008.

William J. Brennan,

Assistant Secretary of Commerce for Oceans and Atmosphere, and Director, Climate Change Science Program.

[FR Doc. E8–17960 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI15

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Gulf of Alaska, September 2008

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take marine mammals incidental to conducting a marine seismic survey in the Gulf of Alaska during September 2008. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to L-DEO to incidentally take, by Level B harassment only, small numbers of several species of marine mammals during the aforementioned activity.

DATES: Comments and information must be received no later than September 4, 2008.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XI15@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either approve or deny the authorization.

Summary of Request

On April 10, 2008, NMFS received an application from L-DEO for the taking, by Level B harassment only, of small numbers of 21 species of marine mammals incidental to conducting, under a cooperative agreement with the National Science Foundation (NSF), a seismic survey in the northeast Gulf of Alaska (GOA). The proposed cruise will take place in the territorial waters and Exclusive Economic Zone (EEZ) of the U.S. and is scheduled to occur from 31 August to 23 September 2008.

The purpose of the proposed seismic survey is to examine crustal structure, fault patterns, and tectonic-climate geohistory of the area. The proposed program will investigate the interplay of climate and tectonics onshore and offshore in an area that includes the world's largest strike-slip earthquakes (Magnitude 8.0 Denali Event), largest earthquake caused uplift (14.4 m or 47 ft in 1962), largest area of seismic uplift (during the 1962 event), highest tsunami (over 200 m or 656 ft in Latoya Bay in 1958), largest temperate glaciers (the Malaspina and Bering Glaciers), and some of the highest sedimentation rates (over 1 m or 3.3 ft per year in some places). Nowhere else on the planet are tectonics and climate interacting to create this combination of mountain building, glacial erosion, strike-slip (California style), and subduction (Japan style) earthquakes.

While affecting a small local population in the past, natural seismic activity in the GOA could influence the whole of the North Pacific basin, which includes many large population centers. Alaska is being directly affected by modern climate change, and new evidence suggests that, as climate changes tectonics respond and vice versa. This interplay could be fundamental to the way the Earth works as a system, and by examining this interplay, the intention of the STEEP program is to examine the feedbacks that drive the system.

The STEEP program is 5 years in length and includes scientists from over 10 universities. The study represents the most comprehensive study of tectonic and climate interactions ever undertaken in a single project. The offshore seismic component is a keystone for the experiment. The data obtained from the seismic survey will be used to determine the history of tectonic-climate interplay, as well as the nature of the Yakutat plate that is causing all of the deformation in southern Alaska, built the Saint Elias Mountains, and started the aggressive glaciation that continues today.

Description of the Activity

The seismic survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), which will occur offshore from the Saint Elias Mountains. The *Langseth* will deploy an array of 36

airguns (6,600 in^3) as an energy source and, at times, a receiving system consisting of one 8–km (3.7–mi) towed hydrophone streamer. The streamer will be towed at a depth of 7 m (23 ft) and the airguns at 9 m (29.5 ft). The *Langseth* will also deploy Ocean Bottom Seismometers (OBSs) to receive the returning acoustic signals. The OBSs are housed in 43–cm diameter glass spheres that have a gross weight of approximately 45 kg (99 lbs). As the airgun array is towed along the survey lines, the hydrophone streamer and/or OBSs will receive the returning acoustic signals and transfer the data to the on-board processing system.

The *Langseth* is expected to depart Prince Rupert, British Columbia, Canada, on approximately 31 August, 2008 for the study area in the GOA (see Figure 1 of L-DEO's application). The airgun array is expected to operate for a total of ~200–250 hours. With OBS deployment and retrieval, the length of the survey will be ~18 days. The overall area within which the STEEP survey will take place is located at ~58–60.5° N, 138–146° W (see Figure 1 of L-DEO's application). The proposed survey will be conducted in water depths from <100 m to >3,000 m (<330 to>9,840 ft) entirely within the territorial waters and Exclusive Economic Zone (EEZ) of the United States. The exact dates of the activities depend upon logistics, as well as weather conditions and/or the need to repeat some lines if data quality is substandard.

The primary marine seismic survey will consist of two long transect lines that will cross each other (Figure 1 of L-DEO's application). For the longer line paralleling the shoreline, a seismic reflection-refraction profile will be shot using the hydrophone streamer as well as 25 OBSs deployed on the seafloor and 60 Texan seismometers deployed on land across the toe of the Bering Glacier. A reflection-refraction profile will also be obtained from the slightly shorter line that is perpendicular to the shoreline using the hydrophone streamer as well as 17 OBSs; this line will be shot twice if time allows. Both of these lines will have a shot spacing of 50 m (164 ft, 20 seconds); if the onshore-offshore line is shot twice, the shot interval used during the second run will be 150 m (492 ft, 60 s). During the reflection-refraction profiling, the airgun array will be towed at a depth of 9 m. In addition, two reflection-only 2–dimensional (2–D) seismic grids will be shot; the western grid is located approximately 150 km (93 mi) from shore whereas the eastern grid is located nearshore (see Figure 1 in L-DEO's application). The shot spacing for these grids will be 50 m (164 ft) and the airgun array will be towed at a depth of 9 m. No OBSs will be deployed during reflection-only profiling. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard. In L-DEO's calculations, 25% has been added to the line total for those additional operations.

The planned seismic survey (excluding the 25 percent contingency) will consist of 1909 km of survey lines including turns (see Figure 1 in L-DEO's application). Most of this effort (923 km or 574 mi) will take place in intermediate water depths of 100–1,000 m and in water depths >1,000 m deep (812 km or 504 mi), and a smaller portion (174 km or 108 mi) will take place in water <100 m deep.

All planned geophysical data acquisition activities will be conducted by L-DEO with on-board assistance by the scientists who have proposed the study. The scientific team is headed by Dr. Sean Gullick of the University of Texas at Austin Institute for Geophysics (UTIG) and also includes Drs. G. Christesen, P. Mann, and H. Van Avendonk of UTIG. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the airgun array, a multibeam echosounder (MBES) will be operated from the *Langseth* continuously throughout the STEEP cruise. Also, a sub-bottom profiler (SBP) will be operated by the *Langseth* during most of the survey.

Vessel Specifications

The *Langseth* has a length of 71.5 m (234.6 ft), a beam of 17 m (55.8 ft), and a maximum draft of 5.9 m (19.4 ft). The ship was designed as a seismic research vessel, with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals. The ship is powered by two Bergen BRG–6 diesel engines, each producing 3,550 hp, that drive the two propellers directly. Each propeller has four blades, and the shaft typically rotates at 750 rpm. The vessel also has an 800–hp bowthruster. The operation speed during seismic acquisition is typically 7.4–9.3 km/h (4–5 kt). When not towing seismic survey gear, the *Langseth* can cruise at 20–24 km/h (11–13 kt). The *Langseth* has a range of 25,000 km (15,534 mi). The *Langseth* will also serve as the platform from which vessel-based marine mammal (and sea turtle) observers (MMOs) will watch for animals before and during airgun operations.

Acoustic Source Specifications

Seismic Airguns

During the proposed survey, the airgun array to be used will consist of 36 airguns, with a total volume of approximately 6,600 in^3. The airguns will consist of a mixture of Bolt 1500LL and 1900LL airguns. The airguns array will be configured as four identical linear arrays or ''strings'' (see Figure 2 in L-DEO's application). Each string will have ten airguns; the first and last airguns in each string are spaced 16 m (52.5 ft) apart. Nine airguns in each string will be fired simultaneously, while the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The four airgun strings will be distributed across an approximate area of 24 x 16 m (78.7 x 52.5 ft) behind the *Langseth* and will be towed approximately 50–100 m (164–328 ft) behind the vessel at 9–m depth. The firing pressure of the array is 2,000 psi. The airgun array will fire in two modes: every 50 m (164 ft; 20 s) or every 150 m (492 ft; 60 s). During firing, a brief (approximately 0.1 s) pulse of sound is emitted. The airguns will be silent during the intervening periods.

Because the actual source is a distributed sound source (36 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level (265 dB re 1 μPa.m, peak to peak). In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

Sound propagation has been predicted by L-DEO for the 36–airgun array operating in deep, intermediate, and shallow water and for a single 1900LL 40 in^3 airgun (which will be used during power downs), in relation to distance and direction from the airguns (See Table 1). A detailed description of L-DEO's modeling effort is provided in Appendix A of the application.

Multibeam Echosounder

The Simrad EM120 operates at 11.25–12.6 kHz and is hull-mounted on the *Langseth*. The beamwidth is 1° fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 μPa (rms; Hammerstad, 2005). For deep-water operation, each ''ping'' consists of nine successive fan-shaped transmissions, each 15 ms in duration and each ensonifying a section that extends 1° fore-aft. The nine successive

transmissions span an overall cross-track angular extent of about 150°, with 16 ms gaps between the pulses for successive sectors. A receiver in the overlap area between the two sectors would receive two 15–ms pulses separated by a 16–ms gap. In shallower water, the pulse duration is reduced to 5 or 2 ms, and the number of transmit beams is also reduced. The ping interval varies with water depth, from approximately 5 s at 1,000 m (3,280 ft) to 20 s at 4,000 m (13,123 ft; Kongsberg Maritime, 2005).

Sub-bottom Profiler

The SBP is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the MBES. The energy from the SBP is directed downward by a 3.5 kHz transducer in the hull of the *Langseth*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. The pulse interval is 1 s, but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause.

Source and Volume	Tow Depth (m)	Water Depth	Predicted RMS Distances (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun	9	Deep	12	40	385
		Intermediate	18	60	578
40 in^3		Shallow	150	296	1050
4 strings	9	Deep	300	950	6000
36 airguns		Intermediate	450	1425	6667
6600 in^3		Shallow	2182	3694	8000

Table 1. Predicted distances to which sound levels ≥190, 180, and 160 dB re 1 μPa might be received in shallow (<100 m; 328 ft), intermediate (100-1,000 m; 328-3,280 ft), and deep (>1,000 m; 3,280 ft) water during the Central American SubFac and STEEP Gulf of Alaska survey.

Because the predictions in Table 1 are based in part on empirical correction factors derived from acoustic calibration of different airgun configurations than those to be used on the *Langseth* (cf. Tolstoy *et al.*, 2004a,b), L-DEO conducted an acoustic calibration study of the *Langseth*'s 36–airgun (approximately 6,600 in^3) array in late 2007/early 2008 in the Gulf of Mexico (LGL Ltd. 2006). Distances where sound levels (e.g., 190, 180, and 160 dB re 1 μPa rms) were received in deep, intermediate, and shallow water will be determined for various airgun configurations. Acoustic data analysis is ongoing. After, analysis, the empirical data from the 2007/2008 calibration study will be used to refine the exclusion zones proposed above for use during the STEEP cruise, if the data are appropriate and available for use at the time of the survey.

Description of Marine Mammals in the Activity Area

A total of 18 cetacean species, 3 species of pinnipeds, and the sea otter are known to or could occur in the GOA study area (see Table 2 of the application; Angliss and Outlaw, 2007). Several of the species are listed as Endangered under the U.S. Endangered Species Act (ESA), including the humpback, sei, fin, blue, North Pacific right, and sperm whale, sea otter, and the western stock of Steller sea lions. The eastern stock of Steller sea lions is listed as Threatened. The southeast Alaska Distinct Population Segment of northern sea otters are also listed as Threatened. There is little information on the distribution of marine mammals inhabiting the waters offshore of SE Alaska or the eastern GOA, although a few reports are available (e.g., Buckland *et al.*, 1993; Hobbs and Lerczak, 1993; Straley *et al.* 1995; Calambokidis *et al.*, 1997; MacLean and Koski, 2005; Angliss and Outlaw, 2007).

The marine mammals that occur in the proposed survey area belong to four taxonomic groups: odontocetes (toothed cetaceans such as dolphins), mysticetes (baleen whales), pinnipeds (seals and sea lions), and fissipeds (the sea otter). Cetaceans and pinnipeds are managed by NMFS and are the subject of this IHA application. Several of the 18 cetacean species are common in the area (see below). Of the three species of pinnipeds that potentially could occur in the study area, only the Steller sea lion and harbor seal are likely to be present. The northern fur seal inhabits the Bering Sea during the summer, and is generally found in SE Alaska in low numbers during the winter and during the northward migration in the spring. Sea otters are managed by the U.S. Fish and Wildlife Service (USFWS). Informal consultation with the USFWS is being sought for sea otters.

Information on the occurrence, distribution, population size, habitat, and conservation status for each of the 21 marine mammal species that are likely to occur in the proposed project area is presented in Table 5 of L-DEO's application and is reprinted in part here as Table 2.

Based on a compilation of data from 1979 to 2001, many cetaceans and pinnipeds occur within the EEZ in both oceanic and coastal waters. However, beaked, sperm, dwarf/pygmy sperm, and baleen whales (except for the humpback) occur predominantly in oceanic waters (May-Collado *et al.*, 2005). Bottlenose and pantropical spotted dolphins, as well as the humpback whale, tend to be coastal.

Table 2 below outlines the cetacean and pinniped species, their habitat and abundance in the proposed project area, and the requested take levels. Additional information regarding the distribution of these species expected to be found in the project area and how the estimated densities were calculated may be found in L-DEO's application.

Species	Habitat	Abundance (Alaska)	Regional Abundance	ESA [1]
Odontocetes				

Species	Habitat	Abundance (Alaska)	Regional Abundance	ESA [1]
Sperm whale (Physeter macrocephalus)	Pelagic	159 [4]	24,000 [5]	EN
Cuvier's beaked whale (Ziphius cavirostris)	Pelagic	N.A.	20,000 [6]	N.L.
Baird's beaked whale (Berardius bairdii)	Pelagic	N.A.	6,000 [7]	N.L.
Stejneger's beaked whale (Mesoplodon stejnegeri)	Likely Pelagic	N.A.	N.A.	N.L.
Beluga whale (Delphinapterus leucas)	Coastal & Ice Edges	366 [8]	N.A.	N.L.
Pacific white-sided dolphin (Lagenorhynchus obliquidens)	Pelagic, Shelf, Coastal	26,880 [9]	931,000 [10]	N.L.
Risso's dolphin (Grampus griseus)	Pelagic, Shelf, Coastal	N.A.	16,066 [11]	N.L.
Killer whale (Orcinus orca)	Pelagic, Shelf, Coastal	1,975 [12]	8,500 [13]	N.L.
Short-finned pilot whale (Globicephala macrorhynchus)	Pelagic, Shelf, Coastal	N.A.	160,200 [6]	N.L.
Harbor Porpoise (Phocoena phocoena)	Coastal	17,076 [14] 41,854 [15]	202,988 [16]	N.L.
Dall's Porpoise (Phocoenoides dalli)	Pelagic & Shelf	83,400 [17]	1,186,000 [18]	N.L.
Mysticetes				
Humpback whale (Megaptera novaeangliae)	Coastal & Banks	2,644 [21]	>6,000 [22]	EN
Minke whale (Balaenoptera acutorostrata)	Coastal & Shelf	1,232 [21]	9,000 [23]	N.L.
Gray whale (Eschrichtius robustus)	Coastal	N.A.	18,813 [20]	N.L.
Sei whale (Balaenoptera borealis)	Pelagic	N.A.	7,260-12,620 [22]	EN
Fin whale (Balaenoptera physalus)	Pelagic	1,652 [24]	13,620-18,680 [22]	EN
Blue whale (Balaenoptera musculus)	Pelagic, Shelf, Coastal	N.A.	1,744 [11]	EN
North Pacific right whale (Eubalaena japonica)	Coastal & Shelf	N.A.	100-200 [19]	EN
Pinnipeds				
Northern fur seal (Callorhinus ursinus)	Pelagic, Breeds Coastally	N.A.	721,935 [25]	N.L.
Steller sea lion (Eumetopias jubatus)	Coastal	47,885 [26] 44,780 [27]	N.A.	T EN
Harbor seal (Phoca vitulina richardsi)	Coastal	180,017 [28]	N.A.	N.L.

Table 2. The habitat, abundance, and conservation status of marine mammals inhabiting the proposed study area in the Gulf of Alaska. Regional abundance estimates are also given, usually for the Northeastern Pacific Ocean or the U.S. West Coast.

Note: N.A. = Not available or not applicable.

[1] U.S. Endangered Species Act. En = Endangered; T = Threatened; N.L. = Not Listed.

[2] IUCN Red List of Threatened Species (2007). Codes for IUCN classifications: CR = Critically Endangered; EN = Endangered; VU = Vulnerable; LR = Lower Risk (-cd = Conservation Dependent; -nt = Near Threatened; -ic = Least Concern); DD = Data Deficient; NL = Not Listed.

[3] Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (UNEP-WCMC 2007). I and II are CITES Appendices; NL = Not Listed.

[4] Western GOA and eastern Aleutians (Zerbini et al., 2004).
[5] Eastern temperate North Pacific (Whitehead, 2002).
[6] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[7] Western North Pacific (Reeves and Leatherwood, 1994; Kasuya, 2002).
[8] Cook Inlet stock (Rugh et al., 2005a).
[9] GOA (Angliss and Outlaw, 2007).
[10] North Pacific Ocean (Buckland et al., 1993).
[11] California/Oregon/Washington (Carretta et al. 2007).
[12] Minimum abundance in Alaskan waters, includes 1,339 resident and 636 transient (Angliss and Outlaw, 2007).
[13] Eastern Tropical Pacific (Ford, 2002).
[14] SE Alaska stock (Angliss and Outlaw, 2007).
[15] GOA stock (Angliss and Outlaw 2007).
[16] Western North Pacific Ocean (totals from Carretta et al., 2007 and Angliss and Outlaw, 2007).
[17] Alaska stock (Angliss and Outlaw, 2007).
[18] North Pacific Ocean and Bering Sea (Houk and Jefferson, 1999).
[19] Eastern North Pacific (Wada, 1973).
[20] Mean of 2000-2001 and 2001-2002 abundance estimates for eastern North Pacific (Angliss and Outlaw, 2007).
[21] Western GOA and eastern Aleutians (Zerbini et al., 2006).
[22] North Pacific Ocean (Carretta et al., 2007).
[23] North Pacific Ocean (Wada, 1976).
[24] Central waters of western Alaska and eastern and central Aleutian Islands (Angliss and Outlaw, 2007).
[25] Abundance for Eastern Pacific Stock (Angliss and Outlaw, 2007).
[26] Eastern U.S. Stock (Angliss and Outlaw, 2007).
[27] Western U.S. Stock (Angliss and Outlaw, 2007).
[28] Alaska statewide (Angliss and Outlaw, 2007).
[29] Abundance estimate for SE Alaska stock (USFWS 2002 in Angliss and Outlaw, 2007).
[30] Abundance estimate Southcentral Alaska (USFWS 2002 in Angliss and Outlaw, 2007).
[31] SW Alaska stock (USFWS 2002 in Angliss and Outlaw, 2007).

Potential Effects on Marine Mammals

Potential Effects of Airguns

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbances, and temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.* 2007). With the possible exception of some cases of temporary threshold shift in harbor seals, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term.

The rms (root mean square) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or peak-to-peak decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of approximately 170 to 172 dB, and to a peak-to-peak measurement of approximately 176 to 178 dB, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000a). The precise difference between rms and peak or peak-to-peak values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a summary of the characteristics of airgun pulses, see Appendices B) of L-DEO's application. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response see Appendix C (e) of the application. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds usually seem to be more tolerant of exposure to airgun pulses than are cetaceans, with relative responsiveness of baleen and toothed whales being variable.

Masking

Obscuring of sounds of interest by interfering sounds, generally at similar frequencies, is known as masking. Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data of relevance. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses. The airgun sounds are pulsed, with quiet periods between the pulses, and whale calls often can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico and Caribbean Sea (Smultea *et al.*, 2004; Tyack *et al.*, 2006). Masking effects of seismic pulses are expected to be negligible in the case of the small odontocetes given the intermittent nature of seismic pulses. Dolphins and porpoises commonly are heard calling while airguns are operating (Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b). Also, the sounds important to small odontocetes are predominantly at much higher frequencies than the airgun sounds, thus further limiting the potential for masking. Masking effects, in general, are discussed further in Appendix B (d) of L-DEO's application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal responds to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of ''harassment,'' let alone affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. This practice potentially overestimates the numbers of marine mammals that are affected in some biologically-important manner.

The sound exposure thresholds that affect marine mammals behaviorally are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, and small toothed whales.

Baleen Whales – Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (e) of L-DEO's application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding activities and moving away from the sound source. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4.5–14.5 km (2.8–9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels.

Responses of humpback whales to seismic surveys have been studied during migration and on the summer feeding grounds, and there has also been discussion of effects on the Brazilian wintering grounds. McCauley *et al.* (1998, 2000) studied the responses of humpback whales off Western Australia to a full-scale seismic survey with a 16–airgun, 2,678–in^3 array, and to a single 20–in^3 airgun with a source level of 227 dB re 1 μPa m peak-to-peak. McCauley *et al.* (1998) documented that initial avoidance reactions began at 5–8 km (3.1–5 mi) from the array, and that those reactions kept most pods approximately 3–4 km (1.9–2.5 mi) from the operating seismic boat. McCauley *et al.* (2000) noted localized displacement during migration of 4–5 km (2.5–3.1 mi) by traveling pods and 7–12 km (4.3–7.5 mi) by cow-calf pairs. Avoidance distances with respect to the single airgun were smaller (2 km (1.2 mi)) but consistent with the results from the full array in terms of received sound levels. Mean avoidance distance from the airgun corresponded to a received sound level of 140 dB re 1 μPa (rms); that was the level at which humpbacks started to show avoidance reactions to an approaching airgun. The standoff range, i.e., the closest point of approach of the whales to the airgun, corresponded to a received level of 143 dB re 1 μPa (rms). However, some individual humpback whales, especially males, approached within distances of 100–400 m (328–1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Humpback whales on their summer feeding grounds in southeast summering in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.*, 1985). Some humpbacks seemed ''startled'' at received levels of 150–169 dB re 1 μPa on an approximate rms basis. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re 1 μPa on an approximate rms basis.

It has been suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). The evidence for this was circumstantial, subject to alternative explanations (IAGC 2004), and not consistent with results from direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC 2007:236).

Results from bowhead whales show that responsiveness of baleen whales to seismic surveys can be quite variable depending on the activity (migrating vs. feeding) of the whales. Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 30 km (12.4–18.6 mi) from a medium-sized airgun source, where received sound levels were on the order of 130 dB re 1 μPa (rms) (Miller *et al.*, 1999; Richardson *et al.*, 1999; see Appendix B (e) of L-DEO's application). However, more recent research on bowhead whales (Miller *et al.*, 2005a; Harris *et al.*, 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. In summer, bowheads typically begin to show avoidance reactions at a received level of about 160 170 dB re 1 μPa (rms) (Richardson *et al.*, 1986; Ljungblad *et al.*, 1988; Miller *et al.*, 2005a). Nonetheless, statistical analysis showed evidence of subtle changes in surfacing, respiration and diving cycles when feeding bowheads were exposed to lower-level pulses from distant seismic operations (Richardson *et al.*, 1986).

Reactions of migration and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding Eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. Malme *et al.* (1986, 1988) estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were

migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and with observations of Western Pacific gray whales feeding off Sakhalin Island, Russia, when a seismic survey was underway just offshore of their feeding area (Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.* 2007a,b).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been reported in areas ensonified by airgun pulses. Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, at times of good sightability, numbers of rorquals seen are similar when airguns are shooting and not shooting (Stone, 2003; Stone and Tasker, 2006). Although individual species did not show any significant displacement in relation to seismic activity, all baleen whales combined were found to remain significantly further from the airguns during shooting compared with periods without shooting (Stone, 2003; Stone and Tasker, 2006). In a study off Nova Scotia, Moulton and Miller (in press) found only a little or no difference in sighting rates and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations.

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (see Appendix A in Malme *et al.*, 1984). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.*, 2007). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987). In any event, brief exposures to sound pulses from the proposed airgun source are highly unlikely to result in prolonged effects.

Toothed Whales – Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, a systematic study on sperm whales has been done (Jochens and Biggs, 2003; Tyack *et al.*, 2003; Jochens *et al.*, 2006; Miller *et al.*, 2006), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large airgun arrays are firing. Nonetheless, there have been indications that small toothed whales sometimes tend to head away or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Stone and Tasker, 2006). In most cases, the avoidance radii for delphinids appear to be small, on the order of 1 km (0.62 mi) or less. The beluga may be a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.*, 2005a).

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005; Finneran and Schlundt, 2004). The animals tolerated high received levels of sound (pk-pk level >200 dB re 1 μPa) before exhibiting aversive behaviors. For pooled data at 3, 10, and 20 kHz, sound exposure levels during sessions with 25, 50, and 75 percent altered behavior were 180, 190, and 199 dB re 1 μPa^2, respectively (Finneran and Schlundt, 2004).

Results for porpoises depend on species. Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005) and, during a survey with a large airgun array, tolerated higher noise levels than did harbor porpoises and gray whales (Bain and Williams, 2006). However, Dall's porpoises do respond to the approach of large airgun arrays by moving away (Calambokidis and Osmek, 1998; Bain and Williams, 2006). The limited available data suggest that harbor porpoises show stronger avoidance (Stone, 2003; Bain and Williams, 2006; Stone and Tasker, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources in general (Richardson *et al.*, 1995; Southall *et al.* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that this species shows considerable tolerance of airgun pulses. In most cases, the whales do not show strong avoidance and continue to call (see Appendix B of L-DEO's application). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging effort is somewhat reduced upon exposure to airgun pulses from a seismic vessel operating in the area, and there may be a delay in diving to foraging depth (Miller *et al.*, 2006; Tyack *et al.*, 2006).

There are no specific data on the behavioral reactions of beaked whales to seismic surveys. Most beaked whales tend to avoid approaching vessels of other types (Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (Kasuya, 1986). It is likely that these beaked whales would normally show strong avoidance of an approaching seismic vessel, but this has not been documented explicitly.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of L-DEO's application).

Pinnipeds – Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources that will be used. Visual monitoring from seismic vessels, usually employing larger sources, has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior (see Appendix B(e) of L-DEO's application). Ringed seals frequently do not avoid the area within a few hundred meters of operating airgun arrays (Harris *et al.*, 2001; Moulton and Lawson, 2002; Miller *et al.*, 2005a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two

other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of any pinnipeds that might be encountered in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix B (e) of L-DEO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses.

NMFS will be developing new noise exposure criteria for marine mammals that take account of the now-available scientific data on TTS, the expected offset between the TTS and permanent threshold shift (PTS) thresholds, differences in the acoustic frequencies to which different marine mammal groups are sensitive, and other relevant factors. Detailed recommendations for new science-based noise exposure criteria were published in early 2008 (Southall *et al.*, 2007).

Several aspects of the planned monitoring and mitigation measures for this project (see below) are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound (see above). In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal and the proposed monitoring and mitigation measures (see below). The following subsections discuss in somewhat more detail the possibilities of Temporary Threshold Shift (TTS), Permanent Threshold Shift (PTS), and non-auditory physical effects.

Temporary Threshold Shift – TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002, 2005). Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB re 1 $\mu Pa^2 \cdot s$ (i.e., 186 dB SEL or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong seismic pulses that each have received levels near 175–180 dB SEL might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. The distance from the *Langseth*'s airguns at which the received energy level (per pulse) would be expected to be ≥175–180 dB SEL are the distances shown in the 190 dB re 1 μPa (rms) column in Table 3 of L-DEO's application and Table 1 above (given that the rms level is approximately 10–15 dB higher than the SEL value for the same pulse). Seismic pulses with received energy levels ≥175–180 dB SEL (190 dB re 1 μPa (rms)) are expected to be restricted to radii no more than 140–200 m (459–656 ft) around the airguns. The specific radius depends on the number of airguns, the depth of the water, and the tow depth of the airgun array. For an odontocete closer to the surface, the maximum radius with ≥175–180 dB SEL or ≥190 dB re 1 μPa (rms) would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin and beluga. There is not published TTS information for other types of cetaceans. However, preliminary evidence from harbor porpoise exposed to airgun sound suggests that its TTS threshold may have been lower (Lucke *et al.* 2007).

For baleen whales, there are no data, direct or indirect, on levels or properties of sound required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those for odontocetes, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. In any event, no cases of TTS are expected given three considerations: (1) the relatively low abundance of baleen whales expected in the planned study areas; (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS; and (3) the mitigation measures that are planned.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged (non-pulse) exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999, 2005; Ketten *et al.*, 2001; Au *et al.*, 2000). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.*, 2007), which would be equivalent to a single pulse with received level approximately 181–186 re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.*, 2005).

A marine mammal within a radius of less than 100 m (328 ft) around a typical

large array of operating airguns might be exposed to a few seismic pulses with levels of greater than or equal to 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. (As noted above, most cetacean species tend to avoid operating airguns, although not all individuals do so.) In addition, ramping up airgun arrays, which is standard operational protocol for large airgun arrays, should allow cetaceans to move away form the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that the cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. The potential for TTS is much lower in this project. With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. If some cetaceans did incur TTS through exposure to airgun sounds, this would very likely be mild, temporary, and reversible.

To avoid the potential for injury, NMFS has determined that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes (and probably mysticetes as well) are exposed to airgun pulses stronger than 180 dB re 1 μPa (rms).

Permanent Threshold Shift – When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time (see Appendix B (f) of L-DEO's application). The specific difference between the PTS and TTS thresholds has not been measured for marine mammals exposed to any sound type. However, based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis.

On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans they estimate that the PTS threshold might be a cumulative SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu Pa^2 \cdot s$. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds. Southall *et al.* (2007) estimate that the PTS threshold could be a cumulative SEL of approximately 186 dB 1 Pa2 s in the harbor seal; for the California sea lion and northern elephant seal the PTS threshold would probably be higher. Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped receives one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa (3.2 bar· m, 0–pk), which would only be found within a few meters of the largest (360–in^3) airguns in the planned airgun array (Caldwell and Dragoset, 2000). A peak pressure of 218 dB re 1 μPa could be received somewhat farther away; to estimate that specific distance, one would need to apply a model that accurately calculates peak pressures in the near-field around an array of airguns.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur. In fact, even the levels immediately adjacent to the airguns may not be sufficient to induce PTS, especially because a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside the airgun for a period longer than the inter-pulse interval. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. The planned monitoring and mitigation measures, including visual monitoring, passive acoustic monitoring (PAM), power downs, and shut downs of the airguns when mammals are seen within the EZ will minimize the already minimal probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects – Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006.; Southall *et al.*, 2007). However, studies examining such effects are limited. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods, when sound is strongly channeled with less-than-normal propagation loss, or when dispersal of the animals is constrained by shorelines, shallows, etc. Airgun pulses, because of their brevity and intermittence, are less likely to trigger resonance or bubble formation than are more prolonged sounds. It is doubtful that any single marine mammal would be exposed to strong seismic sounds for time periods long enough to induce physiological stress.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. This possibility was first explored at a workshop (Gentry [ed.], 2002) held to discuss whether a stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to bubble formation in tissues caused by exposure to noise from naval sonar. However, this link could not be confirmed. Jepson *et al.* (2003) first suggested a possible link between mid-frequency sonar activity and acute chronic tissue damage that results from the formation *in vivo* of gas bubbles, based on a beaked whale stranding in the Canary Islands in 2002 during naval exercises. Fernandez *et al.* (2005a) showed those beaked whales did indeed have gas bubble-associated lesions, as well as fat embolisms. Fernandez *et al.* (2005b) also found evidence of fat embolism in three beaked whales that stranded 100 km (62 mi) north of the Canaries in 2004 during naval exercises. Examinations of several other stranded species have also revealed evidence of gas and fat embolisms (Arbelo *et al.*, 2005; Jepson *et al.*, 2005a; Mendez *et al.*, 2005). Most of the afflicted species were deep divers. There is speculation that

gas and fat embolisms may occur if cetaceans ascend unusually quickly when exposed to aversive sounds, or if sound in the environment causes the destablization of existing bubble nuclei (Potter, 2004; Arbelo *et al.*, 2005; Fernandez *et al.* 2005a; Jepson *et al.*, 2005b; Cox *et al.*, 2006). Even if gas and fat embolisms can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to within short distances of the sound source and probably to projects involving large arrays of airguns. The available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects. It is not known whether aversive behavioral responses to airgun pulses by deep-diving species could lead to indirect physiological problems as apparently can occur upon exposure of some beaked whales to mid-frequency sonar (Cox *et al.*, 2006). Also, the planned mitigation measures, including shut downs of the airguns, will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and their auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Appendix B(g) of LDEO's application provides addition details.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality (Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.*, 2003; Fernandez *et al.*, 2004, 2005a; Cox *et al.*, 2006), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

There is no conclusive evidence of cetacean strandings as a result of exposure to seismic surveys. Speculation concerning a possible link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.*, 2004) was not well founded based on available data (IAGC, 2004; IWC, 2006). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L-DEO vessel *Ewing* was operating a 20–gun, 8,490–in^3 array in the general area. The link between the stranding and the seismic survey was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution when conducting seismic surveys in areas occupied by beaked whales. No injuries of beaked whales are anticipated during the proposed study because of (1) the high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, (2) the proposed monitoring and mitigation measures, and (3) differences between the sound sources operated by L-DEO and those involved in the naval exercises associated with strandings.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder Signals

The Simrad EM 120 12–kHz MBES will be operated from the source vessel at some times during the planned study. Sounds from the MBES are very short pulses, occurring for 15 ms once every 5–20 s, depending on water depth. Most of the energy in the sound pulses emitted by the MBES is at frequencies centered at 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of nine successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the MBES are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2–15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order in order to receive the multiple pulses that might result in sufficient exposure to cause TTS. Burkhardt *et al.* (2007) concluded that immediate direct auditory injury was possible only if a cetacean dived under the vessel into the immediate vicinity of the transducer.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally have a longer pulse duration that the Simrad EM120, and (2) are often directed close to horizontally vs. more downward for the MBES.. The area of possible influence of the MBES is much smaller a narrow band below the source vessel. The duration of exposure for a given marine mammal can be much longer for a Navy sonar.

Marine mammal communications will not be masked appreciably by the MBES signals given its low duty cycle and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral reactions of free-ranging marine mammals to sonars and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21–25 kHz whale-finding sonar with a source level of 215 dB re 1 μPa, gray whales showed slight avoidance (approximately 200 m; 656 ft) behavior (Frankel, 2005). However, all of those observations are of limited relevance to the present situation. Pulse durations from those sonars were much

longer than those of the MBES, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 s pulsed sounds at frequencies similar to those that will be emitted by the MBES used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from an MBES.

L-DEO is not aware of any data on the reactions of pinnipeds to sonar or echosounder sounds at frequencies similar to the 12 kHz frequency of the *Langseth*'s MBES. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the MBES sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES are not likely to result in the harassment of marine mammals.

Sub-bottom Profiler Signals

A SBP will be operated from the source vessel during the planned study. Sounds from the SBP are very short pulses, occurring for 1–4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at mid frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 μPam. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Marine mammal communications will not be masked appreciably by the SBP signals given their directionality and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most odontocetes, the signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. The pulsed signals from the SBP are somewhat weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

NMFS believes that to avoid the potential for permanent physiological damage (Level A Harassment), cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The precautionary nature of these criteria is discussed in Appendix B (f) of L-DEO's application, including the fact that the minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable temporary threshold shift (TTS) and the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage. NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B Harassment.

Estimated Take by Incidental Harassment

All anticipated takes would be ''takes by harassment'', involving temporary changes in behavior. The proposed mitigation measures are expected to minimize the possibility of injurious takes. The sections below describe methods to estimate ''take by harassment'', and present estimates of the numbers of marine mammals that might be affected during the proposed Gulf of Alaska seismic survey. The estimates of ''take by harassment'' are based on consideration of the number of marine mammals that are exposed to certain received sound levels by approximately 2,386 km of seismic surveys in the Gulf of Alaska. The main sources of distributional and numerical data used in deriving the estimates are described below.

Empirical data concerning 190-, 180-, 170-, and 160 dB re 1 μPa isopleth distances in deep and shallow water were acquired for various airgun configurations during the acoustic calibration study of the R/V *Maurice Ewing*'s (*Ewing*) 20–airgun 8,600 in^3 array in 2003 (Tolstoy *et al.*, 2004a,b). The results showed that radii around the airguns where the received level was 180 dB re 1 μPa rms, the threshold for estimating level B harassment applicable to cetaceans (NMFS 2000), varied with water depth. Similar depth-related variation is likely for the 190–dB re 1 μPa threshold for estimating Level B harassment applicable to cetaceans and the 190–dB re 1 μPa threshold applicable to pinnipeds, although these were not measured. The L-DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges.

The empirical data indicated that, for deep water (≤1,000 m; 3,280 ft), the L-DEO model (as applied to the *Ewing*'s airgun configurations) overestimated the measured received sound levels at a given distance (Tolstoy *et al.*, 2004a,b). However, to be conservative, the distances predicted by L-DEO's model for the survey will be applied to deep-water areas during the proposed study (see Figure 3 and 4 and Table 1 in the application). As very few, if any, mammals are expected to occur deeper than 2,000 m (6,562 ft), this depth was used as the maximum relevant depth.

Empirical measurements of sounds from the *Ewing*'s airgun arrays were not conducted for intermediate depths (100–1,000 m; 328–3,280 ft). On the expectation that results would be intermediate, the estimates provided by the model for deep-water situations are used to obtain estimates for intermediate-depth sites. Corresponding correction factors, applied to the modeled radii for the *Langseth*'s airgun configuration, will be used during the proposed study for intermediate depths (see Table 1 of the application).

Empirical measurements near the *Ewing* indicated that in shallow water (<100 m; 328 ft), the L-DEO model underestimates actual levels. In previous L-DEO projects, the exlusion

zones were typically based on measured values and ranged from 1.3 to 15x higher than the modeled values depending on the size of the airgun array and the sound level measured (Tolstoy *et al.*, 2004b). During the proposed cruise, similar correction factors will be applied to derive appropriate shallow-water radii from the modeled deep-water radii for the *Langseth*'s airgun configuration (see Table 1 of the application).

Using the modeled distances and various correction factors, Table 1 (from the application) shows the distances at which four rms sound levels are expected to be received from the 36–airgun array and a single airgun in three different water depths.

The anticipated radii of influence of the MBES and the SBP are much smaller than those for the airgun array. It is assumed that, during simultaneous operations of the airgun array and echosounders, marine mammals close enough to be affected by the echosounders would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the echosounders, marine mammals are not expected to be exposed to sound pressure levels great enough or long enough for taking to occur given echosounders' characteristics (e.g., narrow downward-directed beam) and other considerations described above. Therefore, no additional allowance is included for animals that might be affected by sound sources other than airguns.

There are few systematic data on the numbers and distributions of marine mammals in SE Alaska and the GOA. Zerbini *et al.* (2003, 2006, 2007) conducted vessel-based surveys in the northern and western GOA from the Kenai Peninsula to the central Aleutian Islands during July-August 2001–2003. Killer whales were the principal target of the surveys, but the abundance and distribution of fin, humpback, and minke whales were also reported. Waite (2003) conducted vessel-based surveys in the northern and western GOA from PWS to approximately 160° W off Alaska Peninsula during 26 June- 15 July 2003; cetaceans recorded included small odontocetes, beaked whales, and mysticetes. The eastern part of Zerbini *et al.*'s surveys and Waite's survey were confined to water <1,000 m deep, and most effort was in depths <100 m. Dahlheim *et al.* (2000) conducted aerial surveys of the nearshore waters from Bristol Bay to Dixon Entrance for harbor porpoises; SE Alaska was surveyed during 1–26 June 1993. Dahlheim and Towell (1994) conducted vessel-based surveys of Pacific white-sided dolphins in the inland waterways of SE Alaska during April-May, June or July, and September- early October of 1991–1993. In a report on a seismic cruise in SE Alaska from Dixon Entrance to Kodiak Island during August-September 2004, MacLean and Koski (2005) included density estimates of cetaceans and pinnipeds for each of three depth ranges (<100 m, 100–1,000 m, and >1,000 m) during non-seismic periods.

Most surveys for pinnipeds in Alaskan waters have estimated the number of animals at haul-out sites, not in the water (e.g., Loughlin, 1994; Sease *et al.*, 2001; Withrow and Cesarone, 2002; Sease and York, 2003). To our knowledge, the estimates of MacLean and Koski (2005) are the only in-water estimates of pinnipeds in the proposed survey area.

Table 7 in L-DEO's application gives the average and maximum densities in each of three depth ranges for each cetacean and pinniped species reported to occur in SE Alaska. The densities from MacLean and Koski (2005) and those calculated from effort and sightings in Dahlheim and Towell (1994) and Waite (2003) have been corrected for both detectability and availability bias using correction factors from Dahlheim *et al.* (2000) and Koski *et al.* (1998). Detectability bias is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias refers to the fact that there is less-than–100 percent probability of sighting an animal that is present along the survey trackline. In determining the estimated numbers, L-DEO used the killer whale and mysticete densities from the easternmost blocks (1–6) surveyed by Zerbini *et al.* (2006, 2007), the harbor porpoise densities for the SE Alska portion of the areas surveyed by Dahlheim *et al.* (2000), and only the Pacific white-sided dolphin data from the June or July and September– early October surveys by Dahlheim and Towell (1994). Maps of effort and sightings in Waite (2003) an Zerbini *et al.* (2006, 2007) were used to roughly allocate effort and sighting between waters <100 m and 100–1,000 m deep as either all or none, most (80 percent), or similar (50 percent).

There is some uncertainty about the representatives of the data and the assumptions used in the calculations below for three main reasons: (1) all but the MacLean and Koski (2005) and Dahlheim and Towell (1994) September-early October surveys were carried out earlier (June-July) than the proposed September survey; (2) the Waite (2003) and Zerbini *et al.* (20006, 2007) surveys were in the northern and western GOA; and (3) only the MacLean and Koski (2005) surveys included depths >1,000 m, whereas approximately 43 percent of the proposed line-km are in water depths >1,000 m. However, these represent the best available information. Also, to provide some allowance for these uncertainties L-DEO calculated, ''maximum estimates'' as well as ''best estimates'' of the densities present and numbers potentially affected. Best estimates of density are effort-weighted mean densities from all previous surveys, whereas maximum estimates of density come from whichever of the individual surveys provided the highest density. Where only one estimate was available, the maximum density was assumed to be the observed (best) density multiplied by 1.5.

For three species, L-DEO's density estimates are much higher than densities expected during the proposed survey. The estimates for humpback and fin whales are based on surveys where large concentrations were sighted in nearshore waters and often inland waterways, *viz.* Sitka Sound, Icy Strait, and the bottom of Lynn Canal (MacLean and Koski, 2005), and near Kodiak Island (Waite, 2003; Zerbini *et al.*, 2006). No such concentrations are expected in the proposed survey area. L-DEO's estimates for Dall's porpoise are from vessel-based surveys without seismic survey activity; they are overestimates, possibly by a factor of 5x, given the tendency of this species to approach vessels (Turnock and Quinn, 1991). Noise from the airgun array during the proposed survey is expected to at least reduce and possibly eliminate the tendency to approach the vessel. Dall's porpoises are tolerant of small airgun sources (MacLean and Koski, 2005) and tolerated higher noise levels than other species during a large array survey (Bain and Williams, 2006), but they did respond to that and another large airgun array by moving away (Calambokidis and Osmek, 1998; Bain and Williams, 2006). Because of these considerable overestimates, the best and maximum estimates in Table 7 of L-DEO's application were halved by L-DEO to calculate numbers exposed. In fact, actual densities are undoubtedly much lower than that.

The estimated numbers of individuals potentially exposed are presented below based on a 160–dB re 1 μPa (rms) Level B harassment exposure threshold for cetaceans and pinnipeds. It is assumed that marine mammals exposed to airgun sounds at these levels might experience disruption of behavioral patterns.

It should be noted that the following estimates of takes by harassment assume that the surveys will be fully completed;

in fact, the planned number of line-km has been increased by 25 percent to accomodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-km to seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZ (see will result in the shut down of seismic operations. Thus, the following estimates of the numbers of marine mammals exposed to 160–dB sounds probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

The number of different individuals that may be exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160–dB radius around the operating airgun array on at least one occasion. The proposed seismic lines do not run parallel to each other in close proximity, which minimizes the number of times an individual mammal may be exposed during the survey. Only one transect line is proposed to be surveyed twice, and it is unknown how much time will pass between the first and the second transit. Therefore, some of the same individuals may be approached by the operating airguns and come within the 160–dB distance on up to two occasions. However, this also means that some different marine mammals could occur in the area during the second pass. The line that could be surveyed twice was counted twice in L-DEO's calculations.

For each depth stratum, the number of different individuals potentially exposed to received levels ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density, either ''mean'' (i.e., best estimate) or ''maximum'', for a particular water depth, times
- The anticipated minimum area to be ensonified to that level during airgun operations in each water depth stratum.

The same approach was used to estimate exposures of pinnipeds, delphinids, and Dall's porpoise to received levels ≥170 dB.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by ''drawing'' the applicable 160–dB buffer around each seismic line (depending on water and tow depth) and then calculating the total area within the buffers. Areas where overlap occurred (because of intersecting lines) were limited and included only once to determine the area expected to be ensonified.

Applying the approach described above, approximately 28,900 km2 would be within the 160–dB isopleth on one or more occasions during the survey, including the 25 percent added as a contingency. However, this approach does not allow for turnover in the mammal populations in the study area during the course of the study. This might somewhat underestimate actual numbers of individuals exposed, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. In addition, the approach assumes that no cetaceans will move away or toward the trackline (as the *Langseth* approaches) in response to increasing sound levels prior to the time the levels reach 160 dB re 1 μPa (rms). Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in the absence of the seismic activity) to occur in the waters that will be exposed to ≥160 dB re 1 μPa (rms).

TABLE 3. ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 DB DURING L DEO'S PROPOSED SEISMIC SURVEY IN SE ALASKA IN SEPTEMBER 2008. THE PROPOSED SOUND SOURCE CONSISTS OF A 36-GUN, 6600-IN^3, AIRGUN ARRAY. RECEIVED LEVELS OF AIRGUN SOUNDS ARE EXPRESSED IN DB RE 1 μPARMS (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). THE COLUMN OF NUMBERS IN BOLDFACE SHOWS THE NUMBERS OF ″TAKES″ FOR WHICH AUTHORIZATION IS REQUESTED.

Species	Number of Individuals Exposed to Sound Levels >160 dB									Requested Take Authorization
	Best Estimate [1]					Maximum Estimate [1]				
	Number				% of Pop'n [2]					
	<100 m	100-1000 m	>1000 m	Total		<100 m	100-1000 m	>1000 m	Total	
Odontocetes										
Sperm whale	0	4	45	49	0.2	0	7	67	74	74
Cuvier's beaked whale	0	35	0	35	0.3	0	47	0	47	47
Baird's beaked whale	0	8	0	8	0.1	0	11	0	11	11
Stejneger's beaked whale	0	0	0	0	0	0	0	0	3	3
Beluga	0	0	0	0	0	0	0	0	5	5
Pacific white-sided dolphin	13	43	0	56	0.1	27	176	0	203	203
Risso's dolphin	0	0	0	0	0	0	0	0	5	5
Killer whale	65	51	0	116	1.4	173	112	0	285	285

TABLE 3. ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 DB DURING L DEO'S PROPOSED SEISMIC SURVEY IN SE ALASKA IN SEPTEMBER 2008. THE PROPOSED SOUND SOURCE CONSISTS OF A 36-GUN, 6600-IN^3, AIRGUN ARRAY. RECEIVED LEVELS OF AIRGUN SOUNDS ARE EXPRESSED IN DB RE 1 μPARMS (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). THE COLUMN OF NUMBERS IN BOLDFACE SHOWS THE NUMBERS OF ''TAKES'' FOR WHICH AUTHORIZATION IS REQUESTED.—Continued

Species	Number of Individuals Exposed to Sound Levels >160 dB									Requested Take Authorization
	Best Estimate [1]					Maximum Estimate [1]				
	Number				% of Pop'n [2]					
	<100 m	100-1000 m	>1000 m	Total		<100 m	100-1000 m	>1000 m	Total	
Short-finned pilot whale	0	0	0	0	0	0	0	0	20	20
Harbor porpoise	118	228	0	346	0.4	239	309	0	548	548
Dall's porpoise	372	4225	783	5379	0.5	561	5594	1174	7329	7329
Mysticetes										
North Pacific right whale	0	0	0	0	0	0	0	0	2	2
Gray whale	0	0	0	0	0	0	0	0	6	6
Humpback whale	83	76	87	246	4.1	138	156	130	424	424
Minke whale	6	3	0	9	0.1	25	16	0	41	41
Fin whale	19	71	0	89	0.6	49	129	0	178	178
Blue whale	0	0	0	0	0	0	0	0	2	2
Pinnipeds										
Northern fur seal	0	0	0	0	0	0	0	0	5	5
Harbor seal	10	259	0	269	<0.1	15	388	0	403	403
Steller sea lion	20	54	0	74	<0.1	30	80	0	110	110

[1] Best and maximum estimates of density are from Table 3 in L-DEO's application.
[2] Regional population size estimates are from Table 2 of L-DEO's application.

The ''best estimates'' of the numbers of individual marine mammals that could be exposed to seismic sounds with received levels ≥160 dB re 1 μPa (rms) during the proposed survey is shown in Table 8 of L-DEO's application and Table 3 (shown above). That total includes 49 sperm, 246 humpback, and 89 fin whales, which would represent 0.2 percent, 4.1 percent, and 0.6 percent, respectively, of the regional populations (Table 3). However the numbers of humpback and fin whales exposed are overestimated considerably because the estimated densities are overestimates (see previous section). Dall's porpoise is expected to be the most common species in the study area; the best estimate of the number of Dall's porpoise that could be exposed is 5,379 or 0.5 percent of the regional population (Table 3). This is also an overestimate because the estimated densities are overestimates (see previous section). Estimates for other species are lower (Table 3).

The ''maximum estimate'' column in Table 3 shows estimates totaling 9,701 marine mammals for the three depth ranges combined. For species that could occur in the study area but were not sighted in the surveys from which density estimates were calculated, the average group size has been used as the maximum estimate.

Based on the ''best'' densities, 74 threatened Steller sea lions and 269 harbor seals could be exposed to airgun sounds ≥160 dB re 1 μPa (rms), which would represent <0.1 percent for both of the respective regional populations. The ''maximum estimate'' column in Table 3 shows an estimated 110 Steller sea lions could be exposed to airgun sounds ≥160 dB re 1 μPa (rms). The corresponding numbers for harbor seals are 403. LDEO has also included a low maximum estimate for the northern fur seal, a species that could be present, but whose density was not calculated because it was not sighted during the survey of MacLean and Koski (2005). The numbers for which ''take authorization'' is requested, given in the far right column of Table 3, are based on the maximum 160–dB estimates.

Potential Effects on Habitat

The proposed L-DEO seismic survey in the GOA will not result in any permanent impact on habitats used by marine mammals or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above. The following sections briefly review effects of airguns on fish and invertebrates, and more details are included in Appendices C and D, respectively, in L-DEO's application.

Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information relating to the impacts of seismic surveys on

marine fish populations and invertebrate species is very limited (see Appendix C of L-DEO's application). There are three types of potential effects of exposure to seismic surveys: (1) pathological, (2) physiological, and (3) behavioral. Pathological effects include lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to the ultimate pathological effect on individual animals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially occur are little studied and largely unknown. Furthermore the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because ultimately, the most important aspect of potential impacts relates to how exposure to seismic survey sound affects marine fish populations and their viability, including their availability to fisheries.

The following sections provide a general synopsis of available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish and invertebrates. The information comprises results from scientific studies of varying degrees of soundness and some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects – The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix C of L-DEO's application). For a given sound to result in hearing loss, the sound must exceed, by some specific amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population is unknown; however, it likely depends on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as is known, there are two valid papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns with adverse anatomical effects. One such study indicated anatomical damage and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of ''pink snapper'' (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fishes from the Mackenzie River Delta. This study found that broad whitefish (*Coreogonus nasus*) that received a sound exposure level of 177 dB re 1 $\mu Pa^{2}\cdot s$ showed no hearing loss. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airgun arrays [less than approximately 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m, 29.5 ft, in the former case and <2 m, 6.6 ft, in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cut-off frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1951; Wardle *et al.*, 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.*, 2002). Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a, 2000b; Bjarti, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005).

Except for these two studies, at least with airgun-generated sound treatments, most contributions rely on rather subjective assays such as fish ''alarm'' or ''startle response'' or changes in catch rates by fishers. These observations are important in that they attempt to use the levels of exposures that are likely to be encountered by most free-ranging fish in actual survey areas. However, the associated sound stimuli are often poorly described, and the biological assays are varied (Hastings and Popper, 2005).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fih would be expected to be with a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b, 2003; Bjarti, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005).

Some studies have reported that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.*, 1996; Dalen *et al.*, 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. Saetre and Ona (1996) applied a ''worst-case scenario'' mathematical model to investigate the effects of seismic energy on fish eggs and larvae and concluded that mortality rates caused by exposure to seismic are so low, as compared to natural mortality

rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.*, 1994; Christian *et al.*, 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.*, 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.*, 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.*, 2004), but there is no evidence to support such claims.

Physiological Effects – Physiological effects refer to cellular and/or biochemical responses of fish and invertebrates to acoustic stress. Such stress potentially could affect fish and invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans or fish after exposure to seismic survey sound appear to be temporary (hours to days) in all studies done to date (see Payne *et al.*, 2007 for invertebrates; see Sverdrup *et al.*, 1994; McCauley *et al.*, 2000a,b for fish). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (see Appendix C of L-DEO's application).

Summary of Physical (Pathological and Physiological) Effects – As indicated in the preceding general discussion, there is a relative lack of knowledge about the potential physical (pathological and physiological) effects of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on egg, larval, juvenile, and adult stages at very close range. Considering typical source levels associated with commercial seismic arrays, close proximity to the source would result in exposure to very high energy levels. Whereas egg and larval stages are not able to escape such exposures, juveniles and adults most likely would avoid it. In the case of eggs and larvae, it is likely that the numbers adversely affected by such exposure would not be that different from those succumbing to natural mortality. Limited data regarding physiological impacts on fish and invertebrates indicate that these impacts are short term and are most apparent after exposure at close range.

The proposed seismic program for 2008 is predicted to have negligible to low physical effects on the various life stages of fish and invertebrates for its short duration (approximately 24 days) and approximately 1,909–km of unique survey lines extent. Therefore, physical effects of the proposed program on fish and invertebrates would not be significant.

Behavioral Effects – Because of the apparent lack of serious pathological and physiological effects of seismic energy on marine fish and invertebrates, the highest level of concern now centers on the possible effects of exposure to seismic surveys on the distribution, migration patterns, mating, and catchability of fish. There is a need for more information on exactly what effects such sound sources might have on the detailed behavior patterns of fish and invertebrates at different ranges.

Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic sound) on fish and invertebrate behavior have been conducted on both uncaged and caged animals (e.g., Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Santulli *et al.*, 1999; Wardle *et al.*, 2001; Hassel *et al.*, 2003). Typically, in these studies fish exhibited a sharp ''startle'' response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the ''catchability'' of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.*, 1992; Engas *et al.*, 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.*, 1994; La Bella *et al.*, 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish (e.g., a change in vertical or horizontal distribution) as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

For marine invertebrates, behavioral changes could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies of squid indicated startle responses (McCauley *et al.*, 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.*, 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.*, 2005). Parry and Gason (2006) reported no changes in rock lobster CPUE during or after seismic surveys off western Victoria, Australia, from 1978–2004. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method). Additional information regarding the behavioral effects of seismic on invertebrates is contained in Appendix D (c) of L-DEO's application.

Summary of Behavioral Effects – As is the case with pathological and physiological effects of seismic on fish and invertebrates, available information is relatively scant and often contradictory. There have been well-documented observations of fish and invertebrates exhibiting behaviors that appeared to be responses to exposure to seismic energy (i.e., startle response, change in swimming direction and speed, and change in vertical distribution), but the ultimate importance of those behaviors is unclear. Some studies indicate that such behavioral changes are very temporary, whereas others imply that fish might not resume pre-seismic behaviors or distributions for a number of days. There appears to be a great deal of inter- and intra-specific variability. In the case of finfish, three general types of behavioral responses have been identified: startle, alarm, and avoidance. The type of behavioral reaction appears to depend on many factors, including the type of behavior being exhibited before exposure, and proximity and energy level of sound source.

During the proposed study, only a small fraction of the available habitat would be ensonified at any given time,

and fish species would return to their pre-disturbance behavior once the seismic activity ceased. The proposed seismic program is predicted to have negligible to low behavioral effects on the various life stages of the fish and invertebrates during its relatively short duration and extent.

Because of the reasons noted above and the nature of the proposed activities, the proposed operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks. Similarly, any effects to food sources are expected to be negligible.

Subsistence Activities

Subsistence hunting and fishing continue to feature prominently in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects o human existence from patterns of family life to artistic expression and community religious and celebratory activities.

Marine mammals are hunted legally in Alaskan waters by coastal Alaska Natives. In SE Alaska, the only marine mammals that are hunted are Steller sea lions, harbor seals, and sea otters. Wolfe *et al.* (2004 in Angliss and Outlaw, 2007) estimated that means of 959 and 678 harbor seals from the SE Alaska and the Gulf of Alaska stock, respectively, harvested per year by Alaska Natives between 2000 and 2004, with 743 and 747 seals, respectively, harvested in 2004. Means of 3 and 191 Steller sea lions from the Eastern and Western Alaska stocks, respectively, were harvested per year by Alaska Natives between 2000 and 2004, with 5 and 137 sea lions, respectively, harvested in 2004.

Sea otters are harvested by Alaska Native hunters from SE Alaska to the Aleutian Islands. The USFWS monitors the harvest of sea otters in Alaska. The mean annual subsistence takes from 1996 to 2000 were 97, 297, and 301 animals from the Southwest, Southcentral, and Southeast Alaska sea otter stocks, respectively (USFWS 2002 in Angliss and Outlaw, 2007).

The subsistence harvest of sea otters occurs year-round in coastal communities throughout SE Alaska and the northern GOA. However, there is a general reduction in harvest during the summer months. Hunters are required to obtain tags for sea otter pelts from designated USFWS taggers located in all harvesting villages. The geographical distribution of the harvest is difficult to determine because reports are generated by marking location; harvest location is generally not recorded. Harvests can take place from a large geographic area surrounding each sea otter harvesting village.

Since 1992, the seasonal distribution of harbor seal takes by Alaska Natives has shown two distinct peaks, one during spring, and the other during fall and early winter (Wolfe *et al.*, 2003). The peak harbor seal harvest season for villages in SE Alaska and the northern GOA varies, but in general the months of highest harvest are September through December, with a smaller peak in March. Harvests are traditionally low from May through August, when harbor seals are raising pups and molting in SE Alaska. The Steller sea lion harvest in SE Alaska and the northern GOA is low throughout the year. In 2002, the only harvests in SE Alaska occurred during March and November, and in the northern GOA and Prince William Sound, harvests occurred in July, November, and December (Wolfe *et al.*, 2003).

Beluga whales do not occur regularly within the project area. Any occassional subsistence hunting of belugas that might occur in that area would be opportunistic hunting of extralimital animals.

Gray whales are not hunted within the project area. Some of the gray whales that migrate through SE Alaska in spring and late autumn are hunted in Russian waters during summer, and a very limited subsistence has occurred in recent years off Washington. Any small-scale disturbance effects that might occur in SE Alaska as a result of L-DEO's project would have no effect on the hunts for gray whales in those distant locations.

The proposed survey could potentially impact the availability of marine mammals for harvest in a very small area immediately around the *Langseth*, and for a very short time period during seismic activities. Considering the limited time and locations for the planned seismic surveys, most of which are well offshore (Figure 1 of L-DEO's application), the proposed survey is not expected to have any significant impacts to the availability of Steller sea lions, harbor seals, or sea otters for subsistence harvest. Nonetheless, L-DEO will coordinate its activities with local communities, so that seismic operations will be conducted outside of subsistence hunting times and areas if possible.

TABLE 4. THE ESTIMATED 2002 HARVEST OF HARBOR SEALS AND STELLER SEA LIONS BY ALASKA NATIVE COMMUNITIES NEAR THE PROPOSED STUDY AREA IN THE GULF OF ALASKA.

Village	Estimated Total Harvest of Harbor Seal [1]	Estimated Total Harvest of Steller Sea Lion [1]	Peak of Harbor Seal Harvest [2]
Southeast Alaska Pelican	1.8	0.0	October
Yakutat	137.5	0.0	March
Northern GOA and PWS Chenega Bay	10.5	0.0	August
Cordova	108.5	3.5	February
Tatilek	14.9	0.0	February and March [3]
Valdez	50.0	0.0	December

[1] Includes estimates of both harvested and struck-and-lost animals. Totals are estimated from incomplete household surveys and were multiplied by a correction factor for missed households, which result in fractional estimates rather than whole number counts.
[2] Maximum number harvested in 2002 reported by Wolfe et al. (2003).
[3] Peak harvest in 2000 (Wolfe, 2001).

Subsistence fisheries, on average, provide about 230 pounds (104.5 kg) of food per person per year in rural Alaska (Wolfe, 2000). Of the estimated 43.7 million pounds of wild food harvested in rural Alaska communities annually, subsistence fisheries contributed approximately 60 percent from finfish and 2 percent from shellfish. In the rural communities along the GOA, salmon species are the most targeted subsistence fish.

In 2006, there were 609 residents in the Yakutat Region eligible to participate in the Alaska subsistence fishery. The Yakutat Region subsistence fishers rely mostly upon Pacific halibut, with 5,079–16,561 kg taken in annual catch from 2003 to 2006 (Fall *et al.*, 2007). Halibut typically are taken with a setline or hand-operated fishing gear, with the majority of the catch coming from the setline gear. The halibut fishery is open for subsistence harvest from 1 February to 31 December unless limited for expanded by emergency order. Salmon are also significant importance to subsistence fisheres in the Yakutat Region, with 6,918 harvested there in 2003 (ADFG, 2005). Set gillnets are thee preferred subsistence harvest method for salmon, and there are not restrictions on specific streams, nor are there daily or annual limits to the number of fish taken; there are restrictions to keep subsistence and commercial fisheries separate (ADFG, 2005). Bottomfish, Pacific herring, smelt, and crustaceans are also caught by substance fishers in the Yakutat Region.

Seismic surveys can, at times, cause changes in the catchability of fish. L-DEO will minimize the potential to negatively impact the subsistence fish harvest by avoiding areas where subsistence fishers are fishing. Additionally, L-DEO will consult with each village near the planned project area to identify and avoid areas of potential conflict. These consultations will include all marine subsistence activities (marine mammals and fisheries).

Proposed Mitigation and Monitoring

Mitigation and monitoring measures proposed to be implemented for the proposed seismic survey have been developed and refined during previous L-DEO seismic studies and associated environmental assessments (EAs), IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures that will be adopted during the proposed STEEP survey include: (1) speed or course alteration, provided that doing so will not compromise operational safety requirements; (2) power-down procedures; (3) shutdown procedures; (4) ramp-up procedures; and (5) special procedures for situations or species of particular concern, e.g., avoidance of critical habitat around Steller sea lion rookeries and haul-outs (see ''shut-down procedures'' and ''special procedures for situations and species of particular concern,'' below). The thresholds used for estimating take are also used in connection with proposed mitigation.

Vessel-based Visual Monitoring

Marine Mammal Visual Observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during start-ups of airguns at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown of the airguns. When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of sighting rates and animal behavior with vs. without airgun operations. Based on MMVO observations, the airguns will be powered down, or if necessary, shut down completely (see below), when marine mammals are detected within or about to enter a designated EZ. The MMVOs will continue to maintain watch to determine when the animal(s) are outside the safety radius, and airgun operations will not resume until the animal has left that zone. The predicted distances for the safety radius' are listed according to the sound source, water depth, and received isopleth in Table 1.

During seismic operations in the GOA, at least three MMVOs will be based aboard the *Langseth*. MMVOs will be appointed by L-DEO with NMFS concurrence. At least one MMVO, and when practical two, will monitor the EZ for marine mammals during ongoing daytime operations and nighttime startups of the airguns. Use of two simultaneous MMVOs will increase the proportion of the animals present near the source vessel that are detected. MMVO(s) will be on duty in shifts of duration no longer than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction regarding how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 17.8 m (58.4 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the MMVO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training MMVOs to estimate distances visually, but are generally not useful in measuring distances to animals directly.

Speed or Course Alteration – If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the exclusion zone, the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on th planned science objectives. The activities and movements of the marine mammal(s) (relative to the seismic vessel) will then be closely monitored to determine whether the animals is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigative actions will be taken, i.e., either further course alterations or a power down or shut down of the airguns. Typically, during seismic operations, major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, thus alternative mitigation measures (see below) will need to be implemented.

Power-down Procedures – A power-down involves reducing the number of operating airguns in use to minimize the EZ, so that marine mammals are no longer in or about to enter this zone. A power-down of the airgun array to a reduced number of operating airguns may also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, one airgun will be operated. The continued operation of at least one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the EZ but is likely to enter it, and if the vessel's speed and/or course cannot be changed to avoid the animal(s) entering the EZ, the airguns will be powered down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered down immediately. During a power down of the airgun array, the 40–in^3 airgun will be operated. If a marine mammal is detected within or near the smaller EZ around that single airgun (see Table 1 of L-DEO's application and Table 1 above), all airguns will be shutdown (see next subsection).

Following a power down, airgun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ; or

(2) Has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds; or

(3) Has not been seen within the EZ for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales; or

During airgun operations following a power-down (or shut down) and subsequent animal departure as above, the airgun array will resume operations following ramp-up procedures described below.

Shutdown Procedures – The operating airgun(s) will be shutdown if a marine mammal is detected within or approaching the EZ for the then-operating single 40 in^3 airgun source while the airgun array is at full volume or during a power down. Airgun activity will not resume until the marine mammal has cleared the EZ or until the MMVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as describing in the preceding subsection.

Ramp-up Procedures – A ramp-up procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations or when a power down has exceeded that period. It is proposed that, for the present cruise, this period would be approximately 7 minutes. This period is based on the modeled 180–dB radius for the 36–airgun array (see Table 1 of L-DEO's application and Table 1 here) in relation to the planned speed of the *Langseth* while shooting. Similar periods (approximately 8–10 minutes) were used during previous L-DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 20–25 minutes. During ramp-up, the MMVOs will monitor the EZ, and if marine mammals are sighted, a course/speed change, power down, or shutdown will be implemented as though the full array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the other part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated if a marine mammal is isghted within or near the applicable EZ during the day or close to the vessel at night.

Special Procedures for Situations and Species of Particular Concern

Several species of particular concern could occur in the study area. Special mitigation procedures will be used for those species, as follows:

(1) Critical habitat around Steller sea lion rookeries and haul-outs will be avoided;

(2) The airguns will be shut down if a North Pacific right whale is sighted at any distance from the vessel;

(3) Concentrations of humpack whales, fin whales, and sea otters will be avoided;

(4) The seismic vessel will avoid areas where subsistence fishers are fishing; and

(5) Because the sensitivity of beaked whales, approach to slopes and submarine canyons will be minimized, if possible. There are no submarine canyons in or near the study area, and only a limited amount of airgun operations is planned over slope during the proposed survey (Figure 1 of L-DEO's application).

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will take place to complement the visual monitoring program. Visual monitoring typically is not effective during periods of bad weather or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a ''hairy'' faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from th winch to the main computer lab where the acoustic station and signal condition and processing system will be located. Th lead-in from the hydrophone array is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths <20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations, and also during most periods when the *Langseth* is underway while the airguns are not operating. One Marine Mammal Observer (MMO) will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. MMOs monitoring the acoustical data will be on shift for 1–6 hours. Besides the ''visual'' MMOs, an additional MMO with primary responsibility for PAM will also be aboard. However, all MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will, if visual observations are in progress, contact the MMVO immediately to alert him/her to the presence of the cetacean(s) (if they have not already been seen), and to

allow a power down or shutdown to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

MMVO Data and Documentation

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions or lack thereof. Data will be used to estimate the numbers of mammals potentially ''taken'' by harassment. They will also provide information needed to order a power down or shutdown of airguns when marine mammals are within or near the EZ. When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All observations, as well as information regarding airgun power down and shutdown, will be recorded in a standardized format. Data will be entered into a custom electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. Preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMVO observations will provide the following information:

(1) The basis for decisions about powering down or shutting down airgun arrays.

(2) Information needed to estimate the number of marine mammals potentially 'taken by harassment.' These data will be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Proposed Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NSF has begun consultation with the NMFS, Office of Protected Resources, Endangered Species Division on this proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of the IHA.

National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G.Langseth* in the Gulf of Alaska, September 2008. NMFS will either adopt NSF's EA or conduct a separate NEPA analysis, as necessary, prior to making a determination of the issuance of the IHA.

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the seismic survey in the Gulf of Alaska may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of 20 species of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that pinnipeds would have to be closer than 300 m (0.19 mi) in deep water, 450 m (0.28 mi) at intermediate depths, or 2,182 m (1.36 mi) in shallow water when a single airgun is in use from the vessel to be exposed to levels of sound (190 dB) and to have even a minimal chance of causing TTS; (3) the fact that cetaceans would have to be closer than 950 m (0.6 mi) in deep water, 1,425 m (0.9 mi) at intermediate depths, and 3,694 m (2.3 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (4) the fact that marine mammals would have to be closer than 6,000 m (3.7 mi) in deep water, 6,667 m (4.1 mi) at intermediate depths, and 8,000 m (4.9 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance of causing TTS; and (5) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a few percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L-DEO for conducting a marine geophysical survey in the Gulf of

Alaska from August-September, 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 30, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–17949 Filed 8–4–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Federal Acquisition Regulation; Information Collection; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0142).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning past performance information. The clearance currently expires on November 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 6, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Division, at GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Respondents: 150,000.
Responses Per Respondent: 4.
Annual Responses: 600,000.
Hours Per Response: 2.
Total Burden Hours: 1,200,000.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), 1800 F Street, N.W., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: July 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–17901 Filed 8–4–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 4, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']..'' Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 30, 2008

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Migrant Student Information Exchange User Application Form.
Frequency: On Occasion.
Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 9,800.
Burden Hours: 4,900.
Abstract: The collection is the user application form that is completed by State migrant education program staff who need to obtain access to the Migrant Student Information Exchange (MSIX) system. MSIX User

Administrators in the States will gather and verify information on applicants who will use MSIX. The application form specifies the MSIX user's identity, title/position, work address, work telephone, e-mail address, and role. These applicants would typically be school counselors, registrars, and Migrant Education Program (MEP) specialists. The MSIX is authorized under Section 1308(b)(1)and (2) of Part C of Title l of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. A System of Records Notice (SORN) for the Privacy Act System associated with this information collection is underway. Privacy Data will not be retrieved until an approved SORN has been published in the **Federal Register** for 30 days, or is approved by OMB.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3650. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–17852 Filed 8–4–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 6, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 30, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Case Service Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 3,600.

Abstract: As required by sections 13, 101(a)(10), 106 and 626 of the Rehabilitation Act, the data are submitted annually by State Vocational Rehabilitation agencies. Section 13 of the Act requires the Commissioner to collect and report information specified in section 101(a)(10) to the Congress and the President in the Annual Report. Section 626 requires the same information to be reported for individuals who received supported employment services. Data on persons served are needed, too, to satisfy section 131 calling for an exchange of data between RSA, the Social Security Administration (SSA) and the Department of Labor (DOL).

Section 106 requires RSA to define performance indicators and establish standards, which State Vocational Rehabilitation agencies must achieve to retain program benefits. A subset of data elements from this reporting instrument are abstracted, aggregated, and applied according to prescribed formulae to generate the performance indicators for each State Vocational Rehabilitation agency. The results of such calculations are then compared to the established standards to determine agency performance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3647. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–17853 Filed 8–4–08; 8:45 am]

BILLING CODE4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 4, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']''. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 31, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: Evaluation of Mathematics Curricula.

Frequency: Semi-Annually or Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 615.

Burden Hours: 295.

Abstract: The Evaluation of Math Curricula will assess the effectiveness of up to four early elementary math curricula. This submission is for the third phase of the study, which will expand the study to the third grade. This submission includes the justification and plan for the data collection of information and statistical methods for the evaluation. Data collection forms will be used in the study in this submission. These forms are unchanged from previous OMB submissions. The recruitment and first two years of data collection were cleared in previous OMB submissions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3690. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 703–620–3655. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–17943 Filed 8–4–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 9, 2008; 7:30 a.m.–8 a.m.—Registration. 8 a.m. to 5 p.m. Wednesday, September 10, 2008; 7:30 a.m.–8 a.m.—Registration. 8 a.m. to 12 p.m.

ADDRESSES: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. *Phone:* 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

Tentative Agenda

September 9, 2008

7:30 a.m.–8 a.m.—Registration.
8 a.m.–12 p.m.—Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Overview of Draft Annual Plan, Presentation on the DOE Traditional Oil and Gas Program, Section 999 Planning Process and Draft Annual Plan, Overview of the Ultra-Deepwater Proposed Plan, and Overview of Section 999D Advisory Committees.
12 p.m–1 p.m.—Lunch.
1 p.m.–5 p.m.—Facilitated Discussions.
5 p.m—Adjourn.

September 10, 2008

7:30 a.m.–8 a.m.—Registration.
8 a.m.–10 a.m.—National Energy Technology Laboratory Complementary Plan.
10 a.m.–11:30 a.m.—Facilitated Discussion.
11:30 a.m.–12 p.m.—Public Comment.
12 p.m.—Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer, the Committee Chairman, and a Facilitator will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on

the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on July 30, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–17909 Filed 8–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 11, 2008; 7:30 a.m.–8 a.m.—Registration. 8 a.m. to 5 p.m. Friday, September 12, 2008; 7:30 a.m.–8 a.m.—Registration. 8 a.m. to 12 p.m.

ADDRESSES: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. *Phone:* 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

Tentative Agenda

September 11, 2008

7:30 a.m.–8 a.m.—Registration.

8 a.m.–12 p.m.—Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Overview of Draft Annual Plan, Presentation on the DOE Traditional Oil and Gas Program, Section 999 Planning Process and Draft Annual Plan, Overview of the Unconventional Natural Gas & Other Petroleum Resources Proposed Plan, and Overview of Section 999D Advisory Committees.

12 p.m.–1 p.m.—Lunch.

1 p.m.–5 p.m.—Facilitated Discussions.

5 p.m.—Adjourn.

September 12, 2008

7:30 a.m.–8 a.m.—Registration.

8 a.m.–10 a.m.—National Energy Technology Laboratory Complementary Plan.

10 a.m.–11:30 a.m.—Facilitated Discussion.

11:30 a.m.–12 p.m.—Public Comment.

12 p.m.—Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer, the Committee Chairman, and a Facilitator will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on July 30, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–17911 Filed 8–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–13177–000]

Borough of Weatherly, Pennsylvania; Notice of Application for Preliminary Permit Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 29, 2008.

On April 17, 2008, Borough of Weatherly, Pennsylvania filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of Francis E. Walter Dam Water Power Project. The proposed project would be located on the Lehigh River in Luzerne and Carbon Counties, Pennsylvania. The existing facilities are owned by the U.S. Army Corps of Engineers.

The proposed project using the existing U.S. Army Corps of Engineers' Francis E. Walter Dam and would consist of: (1) A proposed intake structure, (2) a proposed 1,150-foot-long, 16-foot diameter penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 11.5 megawatts, (4) a proposed 0.5-mile-long, 12.47 kilovolt transmission line, and (5) appurtenant facilities. The proposed project would have an average annual generation of 26 gigawatt-hours and be sold to a local utility.

Applicant Contact: Charles F. Wheatley, Jr., Wheatley & Ranquist, P.A., 34 Defense Street, Annapolis, MD 21401, (410) 266–7524, *wheatlaw@aol.com*.

FERC Contact: Jake Tung, (202) 502–8757.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about

this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13177) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17872 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–445–000]

Cheniere Creole Trail Pipeline, L.P.; Notice of Request Under Blanket Authorization

July 28, 2008.

Take notice that on July 22, 2008, Cheniere Creole Trail Pipeline, L.P. (Creole Trail), filed a prior notice request pursuant to sections 157.205, 157.208 and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, and operate, under Creole Trail's blanket certificate issued in Docket No. CP05–358–000, an interconnect with the Barracuda Processing Plant, which is owned and operated by Targa Midstream Services, L.P. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Creole Trail proposes to construct approximately 130 feet of 12-inch diameter pipe near Milepost 0.5 of the Creole Trail Segment 1 Pipeline (Targa Interconnect) in order to interconnect the Creole Trail system with Targa's Barracuda Processing Plant in Johnson Bayou, Cameron Parish, Louisiana. The Targa Interconnect will bi bi-directional and provide shippers on Creole Trail Pipeline the ability to deliver re-gasified LNG for processing or to receive processed domestic natural gas for transport.

The Targa Interconnect will be designed with a maximum allowable pressure (MAOP) of 1,480 psig and, based in customer demand, delivery or receipt of up to 200 MMcf/d. The estimated cost of the Targa Interconnect is $150,000.

Any questions regarding the application should be directed to Joey Mahmoud, V.P., Regulatory and Compliance, Cheniere Energy, Inc., 700 Milam Suite 800, Houston, TX 77002, or (713) 375–5000; or to Lisa Tonery, Fulbright & Jaworski LLP, 666 Fifth Avenue, New York, NY 10103 or (212) 318–3009.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17880 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 28, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP07–207–002.

Applicants: Colorado Interstate Gas Co.

Description: Colorado Interstate Gas Company submits Petition to Amend the Certificate of Public Convenience and Necessity Issued for the High Plains Expansion Project.

Filed Date: 06/27/2008.

Accession Number: 20080627–5125.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 4, 2008.

Docket Numbers: RP08–453–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Fourteenth Revised Sheet 374 to FERC Gas Tariff, Second Revised Volume 1, to be effective 6/30/08.

Filed Date: 07/25/2008.

Accession Number: 20080728–0019.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–17870 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 29, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP08–49–001.

Applicants: Distrigas of Massachusetts LLC.

Description: Distrigas of Massachusetts LLC submits notice and information required to cancel its FERC Gas Tariff First Revised Volume 1, in its entirety.

Filed Date: 07/24/2008.

Accession Number: 20080729–0090.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

Docket Numbers: RP06–200–045.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits First Revised Sheet 9N to FERC Gas Tariff, Second Revised Volume 1, to be effective 7/25/08.

Filed Date: 07/25/2008.

Accession Number: 20080729–0088.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

Docket Numbers: RP08–455–000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Twenty-Second Revised Sheet 4C and Fourth Revised Sheet 4D to FERC Gas Tariff, Second Revised Volume 2, to be effective 7/1/08.

Filed Date: 07/25/2008.

Accession Number: 20080729–0089.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

Docket Numbers: RP96–320–093.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits several capacity release agreements containing negotiated rate provisions executed by Gulf South and Q-West Energy Company.

Filed Date: 07/25/2008.

Accession Number: 20080729–0091.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–17871 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–79–000]

Arkansas Electric Energy; Consumers, Inc. v. Entergy Corporation, Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States, Louisiana, Inc.; Entergy Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Notice of Complaint

July 29, 2008.

Take notice that on July 28, 2008, Arkansas Electric Energy Consumers, Inc., pursuant to sections 206 of the Federal Power Act and Rule 206 of the Commission Rules of Practice and Procedure, filed with the Commission a complaint against Entergy Corporation; Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, Inc.; Entergy Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc; and Entergy Texas, Inc. (collectively, Entergy). The complaint request that the Commission to clarify a number of issues associated with (i) The Entergy System Agreement, (ii) Entergy Arkansas, Inc's. (EAI) pending withdrawal from the System Agreement, (iii) EAI and its affiliates efforts to negotiate a new system agreement to replace that which is currently in place and (iv) EAI's efforts to acquire a combined cycle gas turbine generating plant near Sterlington Louisiana.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of Respondent's answer, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17875 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1193–002]

CPV Liberty, LLC; Notice of Filing

July 29, 2008.

Take notice that on June 30, 2008, CPV Liberty, LLC filed revised market-based rate tariff sheets reflecting the new tariff requirements established in Order Nos. 697 and 697–A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17873 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF08–632–000]

Haverhill North Coke Company; Notice of Filing

July 28, 2008

Take notice that on July 14, 2008, Haverhill North Coke Company, filed with the Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 13, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17876 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP07–430–002]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing

July 28, 2008.

Take notice that on July 25, 2008, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) whose mailing address is P.O. Box 281304, Lakewood, Colorado 80228–8304, filed an application, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's Rules and Regulations, requesting authorization to revise initial incremental transportation rates on its Colorado Lateral Expansion Project in Weld County, Colorado (Project). The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Kinder Morgan requests the Commission's authorization to revise its firm and interruptible incremental transportation rates for the Project approved in the February 21, 2007, order. The amendment reflects an increase of $5,785,659 in the total estimated jurisdictional costs to construct the proposed facilities, from $23,549,557 to $29,335,216. The increased costs are primarily due to higher costs than originally anticipated

for materials, labor, engineering and land acquisition.

Any questions regarding the application are to be directed to Robert F. Harrington, Vice President, Regulatory, Kinder Morgan Interstate Gas Transmission LLC, 370 Van Gordon Street, Lakewood, Colorado 80228–8304, phone (303) 763–3258.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17878 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–62–000; CP07–63–000; CP07–64–000; CP07–65–000]

AES Sparrows Point LNG, LLC; Mid-Atlantic Express, LLC; Notice of Meeting

July 28, 2008.

At the request of U.S. Representative Joe Pitts, representing the 16th Congressional District of Pennsylvania, staff of the Federal Energy Regulatory Commission will attend a meeting sponsored and moderated by the Congressman to discuss constituents' concerns about the proposed Sparrows Point LNG and Pipeline Project.[1]

The meeting will be held on August 12, 2008, beginning at 7p.m. (EDT) at: Octorara High School Auditorium, 226 Highland Road, Atglen, PA 19310.

Please contact Congressman Pitts' district office at 610–444–4581 with any questions regarding this meeting.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17879 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

July 29, 2008.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., section 4314(c)(4). The Commission's PRB will remove the following member: John S. Moot.

And will add the following member: Joseph H. McClelland.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17874 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000, 001, 002, 003, CP05–132–000, 001, 002; Docket No. CP05–131–000, 001, 002 (Not consolidated)]

Dominion Cove Point LNG, L.P.; Dominion Transmission, Inc.; Notice of Technical Conference

July 28, 2008.

On July 18, 2008, the United States Court of Appeals for the District of Columbia issued an order[1] vacating the orders in the underlying proceeding[2] to the extent that they approve the Cove Point Expansion Project, and remanded the case to the Commission to more fully address whether, consistent with the public interest, the Cove Point Expansion Project can go forward without causing unsafe leakage. While upholding the Commission's analysis that defects in Washington Gas Light Company's (WGL) system caused the gas leaks on WGL's system in Prince George's County, Maryland, the Court found that the Commission's determination that WGL will be able to fix its facilities before the November 2008 in-service was not supported by substantial evidence. The Commission staff has determined that discussing with the parties the issues raised by the Court would assist staff in evaluating these matters.

Accordingly, a Technical Conference will be held at the Commission's offices in Washington, DC, on Wednesday, August 6, 2008, commencing at 10 a.m., in order that the parties and the Commission Staff can discuss whether and when the Cove Point Expansion Project can go forward without causing unsafe leakage consistent with the public interest. Participants at the conference should come prepared to discuss all safety-related concerns, and remedial measures taken or to be taken so that WGL's system can safely accommodate regasified LNG.

As part of this discussion, participants should be prepared to provide information regarding WGL's inability to provide safe and reliable services to its customers as a result of the proposed increased amounts of natural gas from Cove Point's LNG import terminal into Cove Point's pipeline and interconnecting pipelines and delivered to WGL. Also, WGL and Dominion Cove Point, LNG, LP should be prepared to provide information which shows the progress and projected progress that they have made to resolve any such gas quality or safety and reliability issues.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a fax to (202) 208–

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[1] For additional information about the Project, please contact the Commission's Office of External Affairs at (202) 502–8004.

[1] *Washington Gas Light Company* v. *Federal Energy Regulatory Commission*, Case No. 07–1015 (D.C. Cir. 2008).

[2] *Dominion Cove Point, LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007).

2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17881 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–208–000]

Rockies Express Pipeline LLC; Notice of Technical Conference

July 28, 2008.

On August 5, 2008, staff of the Office of Energy Projects (OEP) will hold a technical conference for the REX East Project. Rockies Express Pipeline LLC requested the Technical Conference to discuss compliance with Environmental Condition 147 of the Commission's May 30, 2008 Order.

The technical conference will be held on Tuesday, August 5, 2008, at 9 a.m. (EDT) in Room 3M–2B at the Commission Headquarters, 888 1st Street, NE., Washington, DC.

Information concerning any changes to the above may be obtained from the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–FERC (208–3372).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17877 Filed 8–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2008 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required primarily due to increases in U.S. Army Corps of Engineers' operations and maintenance estimates. The Administrator has developed a proposed Robert D. Willis rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning October 1, 2008, the proposed rates would increase annual revenues approximately 14.0 percent from $815,580 to $929,388.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end September 4, 2008. A combined Public Information and Comment Forum is scheduled to be held in Tulsa, Oklahoma at 1 p.m. central time on August 13, 2008, if requested.

ADDRESSES: If the Forum is requested, it will be held in Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Southwestern's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, part 903, Subpart A of the Code of Federal Regulations (10 CFR 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at Title 18, part 300, Subpart L of the Code of Federal Regulations (18 CFR 300).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules.

Following Department of Energy guidelines, Southwestern's Administrator prepared a Current Power Repayment Study using the existing Robert D. Willis rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is due primarily to increases in Corps of Engineers' operations and maintenance expenses at the project. The Revised Power Repayment Study shows that an increase in annual revenue of $113, 808 (a 14.0 percent increase), beginning October 1, 2008, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Robert D. Willis Power Repayment Studies and the proposed rate schedule. If you desire a copy of the Robert D. Willis Power Repayment Data Package with the proposed Rate Schedule, submit your request to the Director, Resources and Rates, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6680 or via e-mail to *swparates@swpa.gov.*

A Public Information and Comment Forum (Forum) is tentatively scheduled to be held on August 13, 2008, to explain to customers and interested parties the proposed rate and supporting studies. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. However, questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Forum should indicate in writing by letter, e-mail, or facsimile transmission (918–595–6656) by August 7, 2008, their intent to appear at such Forum. Should no one indicate an intent to attend by the above-cited deadline, no such Forum will be held.

Persons interested in speaking at the Forum should indicate in writing by letter, e-mail, or facsimile transmission (918–595–6656) at least seven (7)

calendar days prior to the Forum so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of all documents introduced will also be available from the transcribing service for a fee.

Written comments on the proposed Robert D. Willis Rate are due on or before September 4, 2008. Five copies of the written comments should be submitted to James K. McDonald, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma, 74103.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the final Robert D. Willis Rate Proposal, and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: July 28, 2008.

Jon C. Worthington,

Administrator.

[FR Doc. E8–17912 Filed 8–4–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0081; FRL–8700–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Prevention of Significant Deterioration and Non-Attainment Area New Source Review (Renewal), EPA ICR Number 1230.23, OMB Control Number 2060–0003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before *September 4, 2008.*

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2004–0081, to (1) EPA on-line at *www.regulations.gov*, or by mail to: U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW., Mail Code 2822T, Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carrie Wheeler, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–9771; fax number: (919) 541–5509; *e-mail* address: *wheeler.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 30, 2007 (72 *FR* 67720), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. EPA completed an active consultation with the National Association of Clean Air Agencies (NACAA) in January, 2008. Three comments were received and EPA has addressed the comments.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0081, which is available for online viewing at *www.regulations.gov*, or in-person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Prevention of Significant Deterioration and Non-Attainment Area New Source Review (Renewal).

ICR Numbers: EPA ICR No. 1230.23, OMB Control No. 2060–0003.

ICR Status: This ICR is scheduled to expire on October 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Part C of the Clean Air Act (Act)—''Prevention of Significant Deterioration,'' and Part D—''Plan Requirements for Nonattainment Areas,'' require all States to adopt preconstruction review programs for new or modified stationary sources of air pollution. In addition, the provisions of Section 110 of the Act include a requirement for States to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards (NAAQS) are achieved and maintained. Implementing regulations for these three programs are promulgated at 40 CFR 51.160 through 51.166 to Part 51 and 40 CFR 52.21 and 52.24.

In order to receive a construction permit for a major new source or major modification, the applicant must

conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Reviewing authorities review the permit application, provide for public review of the proposed project, and issue the permit based on its consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the state and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for Federal, state and local environmental agencies to adequately review the permit application and thereby properly administer and manage the NSR programs.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be broken down as follows:

Type of permit action	Major PSD	Major Part D	Minor
Number of sources	282	519	74,591
Burden Hours per Response:			
Industry	866	642	40
Permitting Agencies	301	127	30

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

Respondents/Affected Entities: Industrial plants, state and local permitting agencies.

Estimated Number of Respondents: 150,821.

Frequency of Response: 1 per respondent.

Estimated Total Annual Hour Burden: 5,951,068 hours.

Estimated Total Annual Cost: $486,452,000, which includes $475,056,000 annual labor costs and $11,396,000 annual capital/startup and O&M costs.

Changes in the Estimates: There is an increase of 44,960 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The number of respondents has increased by 51 due to the decision by the U.S. Court of Appeals for the DC. Circuit to vacate the Clean Units and Pollution Control Project Exclusion provisions of the NSR program. In addition, the burden per permit for Part C major NSR permit applications increased based on active consultation with NACAA, conducted in January 2008.

Dated: July 29, 2008.

Sara Hisel-McCoy,

Director, Collections Strategies Division.

[FR Doc. E8–17927 Filed 8–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8700–8; Docket ID No. EPA–HQ–ORD 2007–0983]

Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer-Review Workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' (EPA/600/R–07/094). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

The public comment period, announced in (73 FR 39695), and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA has released this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

EPA invites the public to register to attend this workshop as observers. In addition, EPA invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* In preparing a final report, EPA will consider the Versar, Inc. report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives in accordance with this notice.

DATES: The peer-review panel workshop will begin on August 26, 2008, at 8:30 a.m. and end at 5 p.m. on the same day.

ADDRESSES: The peer-review workshop will be held at the U.S. EPA, Research Triangle Park Campus, 109 TW Alexander Drive, Durham, NC 27709. The EPA contractor, Versar Inc., is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by August 19, 2008, preferably via the Internet at *http://epa.versar.com/climatechangeimpactsonozone,* or via the following means: by calling Versar, Inc. at 703–750–3000, extension 737 or 211; sending a facsimile to *Attn:* Malikah Moore at 703–642–6954, or; sending an e-mail to *mmoore@versar.com* and *dsinkowski@versar.com.* The draft ''Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A

Preliminary Synthesis of Climate Change Impacts on O_3'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; *telephone:* 703–347–8561; *facsimile:* 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from Versar, Inc.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151; *telephone:* 703–750–3000, extension 737 or 211; *facsimile: Attn.:* Malikah Moore at 703–642–6954; e-mail: *mmoore@versar.com* and *dsinkowski@versar.com.* To request accommodation of a disability, please contact Malikah Moore at *mmoore@versar.com* or 703–750–3000, ext. 211, preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you need technical information about the document, please contact Brooke L. Hemming, Ph.D., National Center for Environmental Assessment (NCEA); *telephone:* 919–541–5668; *facsimile:* 919–541–7885; *e-mail: hemming.brooke@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

The ''Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' is intended to provide air quality managers and scientists a summary and synthesis of the scientific results that have emerged from the EPA ORD Global Change Research Program (ORD GCRP) assessment of the impact of global change on U.S. regional air quality. The report discusses the studies that have focused on the sensitivity of U.S. air quality to meteorological changes associated with a warming climate in large regions within the continental U.S. The EPA recognizes that climate-air quality interactions occur at multiple scales (both spatial and temporal), and that an understanding of these interactions demands contributions from several scientific disciplines. The EPA ORD GCRP developed a research and assessment program that combines the resources and expertise of the ORD labs and centers toward the goal of developing the necessary scientific underpinnings. The ultimate goal of the Program is to provide air quality managers with the scientific information and tools needed to evaluate the implications of global change and to enhance their ability to consider global change in their decisions. The ''Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' is a preliminary step in that direction. This report provides an update of the progress that has been made in applying climate and atmospheric chemistry models to investigate potential future meteorological effects on air quality. It does not include changes in air pollutant emissions other than those that are explicitly linked to meteorological variables and incorporated within the models (*e.g.*, biogenic VOC emissions). In addition, it provides a preliminary interpretation of what this improved scientific understanding means for air quality management. Future assessment reports will cover the combined impacts of changing climate and air pollutant emissions on air quality. The program also plans to develop additional reports that focus on additional pollutants, including PM and mercury. NCEA worked collaboratively with the EPA Office of Air and Radiation (OAR), and ORD's National Risk Management Research Laboratory (NRMRL), National Exposure Research Laboratory (NERL) and National Center for Environmental Research (NCER) on this report.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public in the afternoon. Please let Versar, Inc. know if you wish to make comments during the workshop. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: July 25, 2008.

Rebecca Clark,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E8–17925 Filed 8–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0545; FRL–8375–9]

Pesticides; Revised Fee Schedule for Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a revised list of pesticide registration service fees applicable to specified pesticide applications and tolerance actions. Under the Pesticide Registration Improvement Renewal Act, the registration service fees for covered pesticide registration applications received on or after October 1, 2008, increase by 5% rounding up to the nearest dollar from the fees published for fiscal year 2008, and certain decision review periods have been reduced. The new fees and decision review periods become effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey (7501P), Immediate Office, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you register pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Agricultural pesticide manufacturers (32532).
- Antimicrobial pesticide manufacturers (32561).
- Antifoulant pesticide manufacturers (32551).
- Wood preservative manufacturers (32519).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the notice and in FIFRA section 33. If

you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–[0545]. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

The Pesticide Registration Improvement Act of 2003 established a new section 33 of FIFRA creating a registration service fee system for certain types of pesticide applications, establishment of tolerances, and certain other regulatory decisions under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 33 also created a schedule of decision review times for applications covered by the service fee system. The Agency began administering the registration service fee system for covered applications received on or after March 23, 2004.

On October 9, 2007, the Pesticide Registration Improvement Renewal Act was signed by the President, revising, among other things, FIFRA section 33. The new law reauthorized the service fee system through 2012 and established fees and review times for applications received during fiscal years 2008 through 2012. As required by section 33(b)(6)(A) of FIFRA, the registration service fees for covered pesticide registration applications received on or after October 1, 2008, increase by five percent rounding up to the nearest dollar from the fees published in the October 30, 2007, **Federal Register** Notice (72 FR 61466). In addition, this notice provides shorter decision review periods for certain application categories.

B. What is the Agency's Authority for Taking this Action?

The publication of this fee schedule is required by section 33(b)(6)(C) of FIFRA as amended.

III. Elements of the Fee Schedule

This unit explains how EPA has organized the fee schedule identified in the statute and how to read the fee schedule tables, and includes a key to terminology published with the table in the Congressional Review. EPA's organization and presentation of the fee schedule information does not affect the categories of registration service fees or the structure or procedures for submitting applications or petitions for tolerance.

A. The Congressional Record Fee Schedule

The fee schedule published in the Congressional Record of July 21, 2007 identifies the registration service fees and decision times and is organized according to the organizational units of the Office of Pesticide Programs (OPP) within EPA. Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The fee categories differ by Division. Not all application types are covered by, or subject to, the fee system.

B. Fee Schedule and Decision Review Times

In today's notice, EPA has retained the format of previous schedule notices and included the corrections to the schedule published in the September 24, 2007 issue of the Congressional Record. The schedules are presented as 11 tables, organized by OPP Division and by type of application or pesticide subject to the fee. These tables only list the decision time review periods for fiscal years 2009 and 2010 as these are the only applicable review periods for applications received on or after October 1, 2008. Unit IV. presents fee tables for the Registration Division (RD) (5 tables), the Antimicrobials Division (AD) (3 tables), and the Biopesticides and Pollution Prevention Division (BPPD) (3 tables).

C. How to Read the Tables

1. *Each table consists of the following columns*:

- The column entitled ''EPA No.'' assigns an EPA identifier to each fee category. There are 140 categories spread across the 3 Divisions. There are 58 RD categories, 27 AD categories, and 55 BPPD categories. For tracking purposes, OPP has assigned a 3-digit identifier to each category, beginning with RD categories, followed by AD and BPPD categories. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R= Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division).
- The column entitled ''CR No.'' cross-references the current Congressional Record category number for convenience. However, EPA will be using the categories as numbered in the ''EPA No.'' column in its tracking systems.
- The column entitled ''Action'' describes the categories of action. In establishing the expanded fee schedule categories, Congress eliminated some of the more confusing terminology of the original categories. For example, instead of the term ''fast-track,'' the schedule in the Congressional Record uses the regulatory phrase ''identical or substantially similar in composition and use to a registered product.''
- The column entitled ''Decision Time'' lists the decision times in months for each type of action for Fiscal Years 2009 and 2010. The 2010 decision times apply to 2011 and 2012. The decision review periods in the tables are based upon EPA fiscal years (FY), which run from October 1 through September 30.
- The column entitled ''FY 09/FY 10 Registration Service Fee ($)'' lists the registration service fee for the action for fiscal year 2009 (October 1, 2008 through September 30, 2009) and fiscal year 2010 (October 1, 2009 through September 30, 2010).

2. *The following acronyms are used in some of the tables*:

- DART–Dose Adequacy Response Team
- DNT–Developmental Neurotoxicity
- HSRB–Human Studies Review Board
- GW/SW–Ground Water/Surface Water
- PHI–Pre-Harvest Interval
- PPE–Personal Protective Equipment
- REI–Restricted Entry Interval
- SAP–FIFRA Scientific Advisory Panel

IV. PRIRA Fee Schedule Tables—Effective October 1, 2008

A. Registration Division (RD)

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that are termed ''conventional chemicals,'' excluding pesticides intended for antimicrobial uses. The term ''conventional chemical'' is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic origin, synthetic chemicals that are identical to naturally-occurring chemicals and microbial pesticides. Tables 1 through 5 of Unit IV.A. cover RD actions.

TABLE 1.—REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R010	1	Food use[1]	24	24	542,115
R020	2	Food use; reduced risk[1]	18	18	542,115
R030	3	Food use; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit and temporary tolerance same as #R040[1]	24	24	599,235
R040	4	Food use; Experimental Use Permit application; establish temporary tolerance; submitted before application for registration; credit $326,025 toward new active ingredient application that follows	18	18	399,525
R050	5	Food use; application submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit and temporary tolerance are granted[1]	14	14	199,815
R060	6	Non-food use; outdoor[1]	21	21	376,635
R070	7	Non-food use; outdoor; reduced risk[1]	16	16	376,635
R080	8	Non-food use; outdoor; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit same as #R090[1]	21	21	416,640
R090	9	Non-food use; outdoor; Experimental Use Permit application submitted before application for registration; credit $228,225 toward new active ingredient application that follows	16	16	279,615
R100	10	Non-food use; outdoor; submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit is granted[1]	12	12	137,025
R110	11	Non-food use; indoor[1]	20	20	209,475
R120	12	Non-food use; indoor; reduced risk[1]	14	14	209,475
R121	13	Non-food use; indoor; Experimental Use Permit application submitted before application for registration; credit $100,000 toward new active ingredient application that follows	18	18	157,500
R122	14	Enriched isomer(s) of registered mixed-isomer active ingredient[1]	18	18	273,945
R123	15	Seed treatment only; includes non-food and food uses; limited uptake into Raw Agricultural Commodities[1]	18	18	407,610
R124	16	Conditional Ruling on Preapplication Study Waivers; applicant-initiated	6	6	2,184

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 2.—REGISTRATION DIVISION—NEW USES

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R130	17	First food use; indoor; food/food handling[1]	21	21	165,375
R140	18	Additional food use; indoor; food/food handling	15	15	38,588
R150	19	First food use[1]	21	21	228,270
R160	20	First food use; reduced risk[1]	16	16	228,270
R170	21	Additional food use	15	15	57,120
R180	22	Additional food use; reduced risk	10	10	57,120
R190	23	Additional food uses; 6 or more submitted in one application	15	15	342,720
R200	24	Additional food uses; 6 or more submitted in one application; reduced risk	10	10	342,720
R210	25	Additional food use; Experimental Use Permit application; establish temporary tolerance; no credit toward new use registration	12	12	42,315
R220	26	Additional food use; Experimental Use Permit application; crop destruct basis; no credit toward new use registration	6	6	17,136
R230	27	Additional use; non-food; outdoor	15	15	22,827
R240	28	Additional use; non-food; outdoor; reduced risk	10	10	22,827
R250	29	Additional use; non-food; outdoor; Experimental Use Permit application; no credit toward new use registration	6	6	17,136
R260	30	New use; non-food; indoor	12	12	11,025
R270	31	New use; non-food; indoor; reduced risk	9	9	11,025
R271	32	New use; non-food; indoor; Experimental Use Permit application; no credit toward new use registration	6	6	8,400
R272	33	Review of Study Protocol; applicant-initiated; excludes DART, pre-registration conferences, Rapid Response review, DNT protocol review, protocols needing HSRB review	3	3	2,184
R273	34	Additional use; seed treatment; limited uptake into Raw Agricultural Commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food or non-food uses	12	12	43,575
R274	35	Additional uses; seed treatment only; 6 or more submitted in one application; limited uptake into Raw Agricultural Commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food and/or non-food uses	12	12	261,450

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 3.—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R280	36	Establish import tolerance; new active ingredient or first food use[1]	21	21	275,625
R290	37	Establish import tolerance; additional food use	15	15	55,125
R291	38	Establish import tolerances; additional food uses; 6 or more crops submitted in one petition	15	15	330,750
R292	39	Amend an established tolerance (e.g., decrease or increase); domestic or import; applicant-initiated	10	10	39,165
R293	40	Establish tolerance(s) for inadvertent residues in one crop; applicant-initiated	12	12	46,200
R294	41	Establish tolerances for inadvertent residues; 6 or more crops submitted in one application; applicant-initiated	12	12	277,200
R295	42	Establish tolerance(s) for residues in one rotational crop in response to a specific rotational crop application; applicant-initiated	15	15	57,120
R296	43	Establish tolerances for residues in rotational crops in response to a specific rotational crop petition; 6 or more crops submitted in one application; applicant-initiated	15	15	342,720

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 4.—REGISTRATION DIVISION—NEW PRODUCTS

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R300	44	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	1,365
R301	45	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.	4	4	1,638
R310	46	New end-use or manufacturing-use product; requires review of data package within RD; includes reviews and/or waivers of data for only: • Product chemistry and/or • Acute toxicity and/or • Public health pest efficacy	6	6	4,578
R311	49	New product; requires approval of new food-use inert; applicant-initiated; excludes approval of safeners	12	12	16,317
R312	50	New product; requires approval of new non-food-use inert; applicant-initiated	6	6	8,715

TABLE 4.—REGISTRATION DIVISION—NEW PRODUCTS—Continued

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R313	51	New product; requires amendment to existing inert tolerance exemption (e.g., adding post-harvest use); applicant-initiated	10	10	11,991
R320	47	New product; new physical form; requires data review in science divisions	12	12	11,424
R330	48	New manufacturing-use product; registered active ingredient; selective data citation	12	12	17,136
R331	52	New product; repack of identical registered end-use product as a manufacturing-use product; same registered uses only	3	3	2,184
R332	53	New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of completely new generic data package; registered uses only	24	24	244,650

TABLE 5.—REGISTRATION DIVISION—AMENDMENTS TO REGISTRATION

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
R340	54	Amendment requiring data review within RD (e.g., changes to precautionary label statements, or source changes to an unregistered source of active ingredient)[1]	4	4	3,444
R350	55	Amendment requiring data review in science divisions (e.g., changes to REI, or PPE, or PHI, or use rate, or number of applications; or add aerial application; or modify GW/SW advisory statement)[1]	8	8	11,424
R370	56	Cancer reassessment; applicant-initiated	18	18	171,255
R371	57	Amendment to Experimental Use Permit; requires data review/risk assessment	6	6	8,715
R372	58	Refined ecological and/or endangered species assessment; applicant-initiated	18	12	163,065

[1]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

B. Antimicrobials Division (AD)

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under FIFRA section 2(mm)(1)(A), including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. Tables 6 through 8 of Unit IV.B. cover AD actions.

TABLE 6.—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
A380	59	Food use; establish tolerance exemption[1]	24	24	99,225
A390	60	Food use; establish tolerance[1]	24	24	165,375
A400	61	Non-food use; outdoor; FIFRA section 2(mm) uses[1]	18	18	82,688

TABLE 6.—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS—Continued

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
A410	62	Non-food use; outdoor; uses other than FIFRA section 2(mm)[1]	21	21	165,375
A420	63	Non-food use; indoor; FIFRA section 2(mm) uses[1]	18	18	55,125
A430	64	Non-food use; indoor; uses other than FIFRA section 2(mm)[1]	20	20	82,688
A431	65	Non-food use; indoor; low-risk and low-toxicity food-grade active ingredient(s); efficacy testing for public health claims required under GLP and following DIS/TSS or AD-approved study protocol	12	12	57,750

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 7.—ANTIMICROBIALS DIVISION—NEW USES

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
A440	66	First food use; establish tolerance exemption[1]	21	21	27,563
A450	67	First food use; establish tolerance[1]	21	21	82,688
A460	68	Additional food use; establish tolerance exemption	15	15	11,025
A470	69	Additional food use; establish tolerance	15	15	27,563
A480	70	Additional use; non-food; outdoor; FIFRA section 2(mm) uses	9	9	16,538
A490	71	Additional use; non-food; outdoor; uses other than FIFRA section 2(mm)	15	15	27,563
A500	72	Additional use; non-food; indoor; FIFRA section 2(mm) uses	9	9	11,025
A510	73	Additional use; non-food; indoor; uses other than FIFRA section 2(mm)	12	12	11,025
A520	74	Experimental Use Permit application	9	9	5,513
A521	75	Review of public health efficacy study protocol within AD; per AD Internal Guidance for the Efficacy Protocol Review Process; applicant-initiated; Tier 1	4	3	2,100
A522	76	Review of public health efficacy study protocol outside AD by members of AD Efficacy Protocol Review Expert Panel; applicant-initiated; Tier 2	15	12	10,500

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 8.—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
A530	77	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	1,103
A531	78	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner	4	4	1,575
A532	85	New product; identical or substantially similar in composition and use to a registered product; registered active ingredient; unregistered source of active ingredient; cite-all data citation except for product chemistry; product chemistry data submitted	4	4	4,410
A540	79	New end-use product; FIFRA section 2(mm) uses only	4	4	4,410
A550	80	New end-use product; uses other than FIFRA section 2(mm); non-FQPA product	6	6	4,410
A560	81	New manufacturing-use product; registered active ingredient; selective data citation	12	12	16,538
A570	82	Label amendment requiring data submission[1]	4	4	3,308
A571	83	Cancer reassessment; applicant-initiated	18	18	82,688
A572	84	Refined ecological risk and/or endangered species assessment; applicant-initiated	18	12	78,750

[1]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

C. Biopesticides and Pollution Prevention Division (BPPD)

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD tables are presented by type of pesticide rather than by type of action: Microbial and biochemical pesticides, straight chain lepidopteran pheromones (SCLPs), and PIPs. Within each table, the types of application are the same as those in other divisions and use the same terminology as in Unit III. Tables 9 through 11 of Unit IV.C. cover BPPD actions.

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B580	86	New active ingredient; food use; establish tolerance[1]	18	18	44,100
B590	87	New active ingredient; food use; establish tolerance exemption[1]	16	16	27,563

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS—Continued

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B600	88	New active ingredient; non-food use[1]	12	12	16,538
B610	89	Food use; Experimental Use Permit application; establish temporary tolerance exemption	9	9	11,025
B620	90	Non-food use; Experimental Use Permit application	6	6	5,513
B621	91	Extend or amend Experimental Use Permit	6	6	4,410
B630	92	First food use; establish tolerance exemption	12	12	11,025
B631	93	Amend established tolerance exemption	9	9	11,025
B640	94	First food use; establish tolerance[1]	18	18	16,538
B641	95	Amend established tolerance (e.g., decrease or increase)	12	12	11,025
B650	96	New use; non-food	6	6	5,513
B660	97	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	1,103
B670	98	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	6	6	4,410
B671	99	New product; food use; unregistered source of active ingredient; requires amendment of established tolerance or tolerance exemption; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	16	16	11,025
B672	100	New product; non-food use or food use having established tolerance or tolerance exemption; unregistered source of active ingredient; no data compensation issues; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	12	12	7,875
B680	101	Label amendment requiring data submission[2]	4	4	4,410
B681	102	Label amendment; unregistered source of active ingredient; supporting data require scientific review	6	6	5,250
B682	103	Protocol review; applicant-initiated; excludes time for HSRB review (pre-application)	3	3	2,100

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 10.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPS)

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B690	104	New active ingredient; food or non-food use[1]	6	6	2,205
B700	105	Experimental Use Permit application; new active ingredient or new use	6	6	1,103
B701	106	Extend or amend Experimental Use Permit	3	3	1,103
B710	107	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	1,103
B720	108	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product specific data or with request for data waivers supported by scientific rationales	4	4	1,103
B721	109	New product; unregistered source of active ingredient	6	6	2,310
B722	110	New use and/or amendment to tolerance or tolerance exemption	6	6	2,310
B730	111	Label amendment requiring data submission[2]	4	4	1,103

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B740	112	Experimental Use Permit application; registered active ingredient; non-food/feed or crop destruct basis; no SAP review required[1]	6	6	82,688
B750	113	Experimental Use Permit application; registered active ingredient; establish temporary tolerance or tolerance exemption; no SAP review required[1]	9	9	110,250
B760	114	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct basis; SAP review required; credit $78,750 toward new active ingredient application that follows	12	12	137,813
B761	115	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct; no SAP review required; credit $78,750 toward new active ingredient application that follows	7	7	82,688

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B770	116	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; SAP review required; credit $105,000 toward new active ingredient application that follows	15	15	165,375
B771	117	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; no SAP review required; credit $105,000 toward new active ingredient application that follows	10	10	110,250
B772	118	Amend or extend Experimental Use Permit; minor changes to experimental design; established temporary tolerance or tolerance exemption is unaffected	3	3	11,025
B773	119	Amend or extend existing Experimental Use Permit; minor changes to experimental design; extend established temporary tolerance or tolerance exemption	5	5	27,563
B860	120	Amend Experimental Use Permit; first food use or major revision of experimental design	6	6	11,025
B780	121	New active ingredient; non-food/feed; no SAP review required[2]	12	12	137,813
B790	122	New active ingredient; Non-food/feed; SAP review required[2]	18	18	192,938
B800	123	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; no SAP review required[2]	12	12	220,500
B810	124	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; SAP review required[2]	18	18	275,625
B820	125	New active ingredient; establish tolerance or tolerance exemption; no SAP review required[2]	15	15	275,625
B840	126	New active ingredient; establish tolerance or tolerance exemption; SAP review required[2]	21	21	330,750
B830	127	New active ingredient; Experimental Use Permit application submitted simultaneously; establish tolerance or tolerance exemption; no SAP review required[2]	15	15	330,750
B850	128	New active ingredient; Experimental Use Permit requested simultaneously; establish tolerance or tolerance exemption; SAP review required[2]	21	21	385,875
B851	129	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; no SAP review required	9	9	110,250
B852	130	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; SAP review required	9	9	165,375
B870	131	New use[1]	9	9	33,075
B880	132	New product; no SAP review required[3]	9	9	27,563

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	CR No.	Action	Decision time (months)		FY 09/FY 10 Registration Service Fee ($)
			FY 09	FY 10	
B881	133	New product; SAP review required[3]	15	15	82,688
B890	134	Amendment; seed production to commercial registration; no SAP review required	9	9	55,125
B891	135	Amendment; seed production to commercial registration; SAP review required	15	15	110,250
B900	136	Amendment (except #B890); no SAP review required; (e.g., new IRM requirements that are applicant-initiated; or amending a conditional registration to extend the registration expiration date with additional data submitted) [4]	6	6	11,025
B901	137	Amendment (except #B890); SAP review required[4]	12	12	66,150
B902	138	PIP protocol review	3	3	5,513
B903	139	Inert ingredient tolerance exemption; e.g., a marker such as NPT II; reviewed in BPPD	6	6	55,125
B904	140	Import tolerance or tolerance exemption; processed commodities/food only	9	9	110,250

[1]Example: Transfer existing PIP trait by traditional breeding, such as from field corn to sweet corn.
[2]May be either a registration for seed increase or a full commercial registration. If a seed increase registration is granted first, full commercial registration is obtained using B890.
[3]Example: Stacking PIP traits within a crop using traditional breeding techniques.
[4]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

V. How to Pay Fees

Applicants must submit fee payments at the time of application, and EPA will reject any application that does not contain evidence that the fee has been paid. EPA has developed a web site at *http://www.epa.gov/pesticides/fees/tool/index.htm* to help applicants identify the fee category and the fee. All fees should be rounded up to the whole dollar. Payments may be made by check, bank draft, or money order or online with a credit card or wire transfer.

A. Online

You may pay electronically through the government payment website *www.pay.gov*.

1. From the pay.gov home page, under ''Find Public Forms.''
2. Select ''search by Agency name.''
3. On the A-Z Index of Forms page, select ''E.''
4. Select ''Environmental Protection Agency.''
5. From the list of forms, select ''Prepayment of Pesticide Registration Improvement Act Fee.''
6. Complete the form entering the PRIA fee category and fee.
7. Keep a copy of the pay.gov acknowledgement of payment. A copy of the acknowledgement must be printed and attached to the front of the application to assure that EPA can match the application with the payment.

B. By Check or Money Order

All payments must be in United States currency by check, bank draft, or money order drawn to the order of the Environmental Protection Agency. On the check, the applicant must supply in the information line either the registration number of the product or the company number. A copy of the check must accompany the application to the Agency, specifically attached to the front of the application. The copy of the check ensures that payment has been made at the time of application and will enable the Agency to properly connect the payment with the application sent to the Agency.

If you send the Agency a check, it will be converted into an electronic funds transfer (EFT). This means the Agency will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. The Agency will destroy your original check but will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize the Agency to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, the Agency may try to make the transfer up to two times.

All paper-based payments should be sent to the following address:

1. *By U.S. Postal Service*. U.S. Environmental Protection Agency, Washington Finance Center, FIFRA Service Fees, P.O. Box 979074, St. Louis, MO 63197–9000.
2. *By courier or personal delivery*. U.S. Bank, Government Lockbox 979074, 1005 Convention Plaza, SL–MO–C2–GL, St. Louis, MO 63197, (314) 418–4990.

VI. How to Submit Applications

Submissions to the Agency should be made at the address given in Unit VII. The applicant should attach documentation that the fee has been paid which may be pay.gov payment acknowledgement or a copy of the check. If the applicant is applying for a fee waiver, the applicant should provide sufficient documentation as described

in FIFRA section 33(b)(7) and *http://www.epa.gov/pesticides/fees/questions/waivers.htm*. The fee waiver request should be easy to identify and separate from the rest of the application and submitted with documentation that at least 25% of the fee has been paid.

If evidence of fee payment (electronic acknowledgement or copy of check properly identified as to company) is not submitted with the application, EPA will reject the application and will not process it further.

After EPA receives an application and payment, EPA performs a screen on the application to determine that the category is correct and that the proper fee amount has been paid. If either is incorrect, EPA will notify the applicant and require payment of any additional amount due. A refund will be provided in case of an overpayment. EPA will not process the application further until the proper fee has been paid for the category of application or a request for a fee waiver accompanies the application and the appropriate portion of the fee has been paid.

EPA will assign a unique identification number to each covered application for which payment has been made. EPA notifies the applicant of the unique identification number. This information is sent by e-mail if EPA has either an e-mail address on file or an e-mail address is provided on the application.

VII. Addresses

New covered applications should be identified in the title line with the mail code REGFEE.

1. *By USPS mail*. Document Processing Desk (REGFEE), Office of Pesticide Programs (7504P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

2. *By courier*. Document Processing Desk (REGFEE), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202–4501.

Couriers and delivery personnel must present a valid picture identification card to gain access to the building. Hours of operation for the Document Processing Desk are 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides.

Dated: July 28, 2008.

Marty Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. E8–17936 Filed 8–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2008–0563 FRL–8701–1]

Relocation of National Oil and Hazardous Substance Pollution Contingency Plan, Subpart J Confidential Business Information Files

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: The Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response, Office of Emergency Management announces that the Confidential Business Information (CBI) for products listed on the National Oil and Hazardous Substance Pollution Contingency Plan, under 40 CFR 300, Subpart J will be moved to a new contractor's office location. System Research and Applications Corporation (SRA) was awarded the new contract to support work on 40 CFR 300, Subpart J. The CBI files will be moved from the Computer Sciences Corporation (CSC) office in Alexandria, VA to SRA's office in Arlington, VA.

DATES: Comments must be received on or before August 11, 2008. The CBI files will be moved from the Computer Sciences Corporation (CSC) office in Alexandria, VA to SRA's office in Arlington, VA on Tuesday, August 12, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2008–0563 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comment.
- *Mail:* The mailing address of the docket for this rule making is the EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–OPA–2008–0563, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2008–0563. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or *superfund.docket@epa.gov*. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy form at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center, EPA/DC is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Leigh DeHaven, Office of Solid Waste and Emergency Response, Office of Emergency Management (5104A),

Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.; Ariel Rios North, Room 6450EE, *telephone number:* (202) 564–1974; *fax number:* (202) 564–2625; *e-mail address: dehaven.leigh@epa.gov*. General information on 40 CFR 300, Subpart J and the NCP Product Schedule can be found on the NCP Product Schedule Web site at *http://www.epa.gov/emergencies/content/ncp/index.htm.*

Dated: July 30, 2008.

Deborah Y. Dietrich,

Director, Office of Emergency Management, Office of Solid Waste and Emergency Response.

[FR Doc. E8–17929 Filed 8–4–08; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Equal Employment Opportunity Commission Meeting

Date and Time: Wednesday, August 6, 2008, 1 p.m. Eastern Time.

Place: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

Status: Part of the meeting will be open to the public and part of the meeting will be closed.

Matters To Be Considered

Open Session

1. Announcement of Notation Votes, and
2. Sole Source Subscription Renewal to LRP's CyberFEDS on the Web.

Closed Session

Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.

Note: In accordance with the Sunshine Act, the open session of the meeting will be open to public observation of the Commission's deliberations and voting. The remainder of the meeting will be closed. Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

Contact Person for More Information: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: July 30, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E8–17854 Filed 8–4–08; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL TRADE COMMISSION

[File No. 081 0045]

McCormick & Company, Incorporated; Analysis of the Proposed Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 28, 2008

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''McCormick, File No. 081 0045,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-McCormick*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Jill M. Frumin, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2758.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 30, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/07/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from McCormick & Company, Incorporated (''McCormick'' or ''Respondent''), which is designed to remedy the anticompetitive effects that would otherwise result from McCormick's proposed acquisition of Unilever's Lawry's and Adolph's brands of seasoned salt products. Under the terms of the proposed Consent Agreement, McCormick is required to divest its entire Season-All business to an up-front buyer, Morton International, Inc (''Morton'' or ''Purchaser'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Asset Purchase Agreement dated November 13, 2007 (the ''Acquisition Agreement''), McCormick proposes to acquire the Lawry's and Adolph's brands of marinades, spice, and seasoning products (''Lawry's'') from Unilever N.V., a Netherlands corporation, for approximately $605 million in cash. The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for branded seasoned salt in the United States.

II. Description of the Parties

McCormick is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland. The company manufactures, markets, and sells spices, seasonings, and flavors to grocery retailers and the food industry. In 2006, McCormick's sales were approximately $2.7 billion.

Unilever N.V., a Netherlands corporation, is an international manufacturer of leading brands in the food, home care, and personal care industry, including Lawry's and Adolph's. In 2006, Lawry's and Adolph's brands combined sales were approximately $153 million.

III. Branded Seasoned Salt

The relevant product market in which to assess the competitive effects of the proposed Acquisition is the manufacture and sale of branded seasoned salt products. Branded seasoned salt products include several different types of spices, including seasoned salt, garlic salt, and reduced sodium varieties. The evidence indicates that consumers, if faced with a five to ten percent increase in the price of branded seasoned salt, would not switch to other spice blends or seasoning products.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Brand equity plays a critical role in determining the competitive strength of a seasoned salt product. Consistent with Commission findings in previous branded consumables cases, the need for distribution, infrastructure, and a U.S. sales force creates significant impediments to the ability of foreign firms to successfully and competitively sell branded seasoned salt into the United States.

The United States market for branded seasoned salt is highly concentrated. Today, this approximately $100 million market consists of two significant branded products: Lawry's line of seasoned salt products and McCormick's Season-All products. The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the only two significant suppliers of branded seasoned salt products in the United States. As a result of the acquisition, McCormick would account for nearly 80% of the sales of branded seasoned salt products in the United States.

Consumers have benefitted from the competition between McCormick and Lawry's on pricing, discounts, promotional trade spending, and product innovation. Thus, unremedied, the proposed acquisition likely would cause significant anticompetitive harm by enabling McCormick to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

IV. Entry

Entry into this market would require the investment of high sunk costs to, among other things, develop products, establish a brand name, and provide promotional funding and advertising to support the product(s), which would be difficult to justify given the market structure and sales opportunities in the affected markets. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

V. The Terms of the Agreement Containing Consent Orders

The proposed Consent Agreement will remedy the Proposed Acquisition's anticompetitive effects in the relevant market. The Consent Agreement preserves competition in the branded seasoned salt market by requiring McCormick to divest its Season-All (seasoned salt spice blends) business to an up-front buyer, Morton. The Season-All assets include: Season-All seasoned salt, Garlic Season-All seasoned salt, Pepper Season-All seasoned salt, Spicy Season-All seasoned salt, 25% Less Sodium Season-All seasoned salt, and Season-All coating mix.

The Commission is satisfied that Morton is a well-qualified acquirer of the Season-All business. Morton supplies an extensive variety of salt products to the food service industry. These products currently include table salt, kosher salt, French fry salt, as well as disposable shakers, portion packets, water softening salts, and ice control salts. Morton has the resources, technical skills, and experience to ensure the continued success of the Season-All business.

The proposed Consent Agreement requires that the divestitures occur no later than ten (10) business days after the acquisition is consummated. However, if McCormick divests the Season-All business to Morton during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Respondent that Purchaser is not an acceptable acquirer or that the asset purchase agreement with Purchaser is not an acceptable manner of divestiture, then Respondent must immediately rescind the transaction in question and divest those assets to another buyer within three (3) months of the date the order becomes final. At that time, Respondent must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The proposed Consent Agreement also enables the Commission to appoint a trustee to divest any assets identified in the order that Respondent has not divested to satisfy the requirements of

the order. In addition, the order enables the Commission to seek civil penalties against Respondent for non-compliance with the order.

The proposed Consent Agreement further requires McCormick to maintain the viability of the assets identified for divestiture. Among other requirements related to maintaining operations of the assets, the proposed Consent Agreement requires McCormick to: (1) maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the assets' marketability or viability; (4) maintain the assets consistent with past practices; (5) use best efforts to preserve the assets' existing relationships with suppliers, customers, and employees; and (6) keep and maintain the assets at inventory levels consistent with past practices.

The proposed Consent Agreement prohibits McCormick, for ten (10) years, from acquiring, without providing the Commission with prior notice, any other seasoned salt product, or any interest in any other spice blends business. The provisions regarding prior notice are consistent with prior Orders. The proposed Consent Agreement does not restrict McCormick from expanding its line of spices.

McCormick is required to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which Respondent signed the proposed Consent Agreement, and every thirty (30) days thereafter until the divestitures are completed, and annually for ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order and the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. E8–17868 Filed 8–4–08: 8:45 am]

[BILLING CODE 6750–01–S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Impact of Cultural and Socioeconomic Factors on Post-Treatment Surveillance Among African Americans With Colorectal Cancer, Potential Extramural Project 2008–R–03

Notice of Cancellation: This notice was published in the **Federal Register** on July 22, 2008, Volume 73, Number 141, page 42576. The meeting previously scheduled to convene on August 6, 2008 has been cancelled.

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 28, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–17913 Filed 8–4–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Compassion Capital Fund Impact Evaluation.

OMB No.: 0970–0293.

Description: This proposed information collection activity is an extension of the follow-up survey of faith-based and community organizations participating in the Compassion Capital Fund (CCF) Impact Evaluation. The currently approved information collection will expire on December 31, 2008. This information collection request will include the agency's request for an extension of the initial survey instruments for an additional three years.

The CCF evaluation is an important opportunity to examine the effectiveness of the Compassion Capital Fund Demonstration program in meeting its objective of improving the capacity of faith-based and community organizations. The evaluation includes selected CCF-funded intermediary organizations that provide capacity-building services and the faith-based and community organizations that sought those services. The follow-up survey will be used to collect information from the faith-based and community based organizations on various areas of organizational capacity.

The study design includes the random assignment of faith based and community organizations to either a treatment group that receives capacity-building services from a CCF intermediary grantee or to a control group that does not. The impact of the services provided by intermediaries, primarily through sub-awards and/or technical assistance (TA), will be determined by comparing the changes reported through the survey in organizational and service capacity of the recipient organizations with those of the control group.

Respondents: Faith-based and community organizations included in the CCF impact evaluation.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Follow-up Survey	455	1	.42	191
Estimated Total Annual Burden Hours:				191

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 29, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–17721 Filed 8–4–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0391]

Draft Guidance for Industry on Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes; 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 ''Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes.'' This draft guidance provides recommendations to applicants on information to include in support of parametric release for sterile products terminally sterilized by moist heat when submitting a new drug application (NDA), abbreviated new drug application (ANDA), new animal drug application (NADA), abbreviated new animal drug application (ANADA), or biologics license application (BLA).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; the Communications Staff (HFV–12), Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855; the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Marla Stevens-Riley, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9310;

Deborah Trout, Center for Biologics Evaluation and Research (HFM–675), Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20892, 301–827–3031; or

Mai Huynh, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8273.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes.'' The draft guidance addresses the information that should be submitted in an approved new drug application (NDA), abbreviated new drug application (ANDA), new animal drug application (NADA), abbreviated new animal drug application (ANADA), or biologics license application (BLA) in support of parametric release for sterile products terminally sterilized by moist heat.

''Parametric release'' is defined as a sterility assurance release program where demonstrated control of the sterilization process enables a firm to use defined critical process controls, in lieu of the sterility test, to fulfill the intent of 21 CFR 211.167(a). Under this strategy, market release of terminally sterilized products can be based upon meeting the defined sterilization parameters and not on performing an approved sterility test. Meeting the requirements of the parametric release process can provide greater assurance that a batch meets the sterility requirement than can be achieved with a sterility test of finished units drawn from the batch.

Parametric release allows manufacturers to replace sterility testing of samples drawn from the finished product as a release criterion with acceptance criteria for the control of identified process parameters. Parametric release of the batch is then based on documented evidence of the control of critical parameters, removing the need for testing of samples drawn from the finished product.

An application to FDA is required to obtain approval for parametric release. The approval of parametric release is based on an assessment of the applicant's proposed critical process parameters and how they are controlled. Demonstrated reliability of the production terminal sterilization cycle, microbiological control and monitoring, and control of production cycle parameters within established validated limits is part of this assessment.

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 inclusion of recommended

information to support applications for parametric release of human and veterinary drug products terminally sterilized by moist heat processes. 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. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information requested in the draft guidance is covered under FDA regulations at 21 CFR 314.50, 314.70, and 314.81(b)(2) for human drugs, 21 CFR 514.1, 514.8, 514.8(b)(4) and (c) for animal drugs, and 21 CFR 601.2 and 601.12 for biologics. The collection of information is approved under the following OMB control numbers: 0910–0001 for human drugs, 0910–0600 for animal drugs, and 0910–0338 for biologics.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments and submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. 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.regulations.gov*.

Dated: July 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17855 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0417]

Draft Guidance for the Public and the Food and Drug Administration Staff on Convening Advisory Committee Meetings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for the Public and FDA Staff on Convening Advisory Committee Meetings.'' This draft guidance is intended to provide guidance on when FDA should consider referring a matter to an advisory committee. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of four guidances intended to improve FDA's advisory committee procedures.

DATES: Although you can comment on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800–835–4709 or 301–827–1800. Submit written comments on the 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.regulations.gov* . See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy and Planning (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for the Public and FDA Staff on Convening Advisory Committee Meetings,'' dated July 2008. Advisory committees provide FDA with independent, expert advice on a range of complex scientific and technical issues related to the products it regulates. These issues typically focus on a specific food or medical product, a class of foods or medical products, the development and implementation of a specific regulatory program, or the development and implementation of a regulatory policy. Advisory committee meetings also facilitate public discussion of important topics and provide a means for the public to provide comments to the agency.

To enhance the transparency of FDA's advisory committee program, the agency is publishing this draft guidance to provide its current thinking on when to bring a matter to an advisory committee. In some instances, FDA refers a matter to an advisory committee because it is required to do so by law. In others, FDA convenes an advisory committee meeting at its own discretion. Regardless, FDA recognizes that advisory committee meetings demand significant resource commitments by advisory committee members, sponsors, and other public participants, as well as for FDA itself, and should be used for important matters. The draft guidance is intended to clarify how the agency identifies which matters should be referred.

In developing this draft guidance, FDA has been mindful of the legal requirements of the Federal Advisory Committee Act (FACA), other relevant statutes, regulations, guidance, and policies, and the goals of FDA's of advisory committee program.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The draft guidance represents the agency's current thinking on when FDA convenes an advisory committee meeting. 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 this document.

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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/ohrms/dockets/default.htm* or *http://www.regulations.gov*.

Dated: August 1, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–18002 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0196] (formerly Docket No. 2007D–0449)

Guidance for Food and Drug Administration Advisory Committee Members and Food and Drug Administration Staff: Voting Procedures for Advisory Committee Meetings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for FDA advisory committee members and FDA staff entitled ''Voting Procedures for Advisory Committee Meetings.'' This document is intended to provide guidance on advisory committee voting procedures that should be used when votes are taken during advisory committee meetings. It does not define when votes should be taken. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of three additional guidances and one draft guidance, intended to improve FDA's advisory committee procedures.

DATES: The guidance is effective August 5, 2008. Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit telephone requests to 800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy, Planning, and Preparedness (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for FDA advisory committee members and FDA staff entitled ''Voting Procedures for Advisory Committee Meetings,'' dated August 2008. FDA's advisory committees provide independent and expert advice on scientific, technical, and policy matters related to the development and evaluation of products regulated by FDA. Advisory committees are a valuable resource to FDA, and they make an important contribution to the agency's decisionmaking processes. Although advisory committees provide recommendations to FDA, the agency makes the final decisions.

Advisory committees typically communicate advice or recommendations to the agency in two ways. First, FDA learns from the discussion and exchange that occurs among advisory committee members, and from individual recommendations and suggestions made during the discussion of any advisory committee meeting. Second, advisory committees often vote on a question or series of questions posed to the committee during a committee meeting.

Votes can be an effective means of communicating with FDA because they provide feedback on discrete questions. These questions are generally scientific in nature and can involve a range of subjects, including evaluation of postmarket safety data or premarket assessment of a product's risk/benefit profile. Because all members vote on the same question, the results help FDA gauge a committee's collective view on complex, multi-faceted issues. This view helps inform the agency's own deliberations on scientific and regulatory matters.

This guidance recommends adopting uniform voting procedures to help maximize the integrity and meaning of voting results. In developing these recommendations, FDA was mindful of the legal requirements of the Federal Advisory Committee Act, other relevant statutes (e.g., the Federal Food, Drug, and Cosmetic Act), regulations (e.g., 21 CFR part 14), guidance, policies, and the goals of FDA's of advisory committee program.

FDA issued a draft of this guidance on November 19, 2007 (72 FR 65046), and gave interested persons an opportunity to comment on the agency's proposal. FDA carefully evaluated the comments submitted to that docket and considered them in preparation of the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on uniform procedures that should be used for the voting process when votes are taken during advisory committee meetings. 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 this document. 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be

accepted by FDA only through FDMS at *http://www.regulations.gov*.

Electronic Access:

Persons with access to the Internet may obtain the document at: *http://www.regulations.gov.*

Dated: August 1, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–18001 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0425] (formerly Docket No. 2007D–0021)

Guidance for Industry: Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members,'' dated August 2008. This document provides guidance to industry sponsors, applicants, and petitioners who develop, prepare, or submit briefing materials that will be given to advisory committee members as background information before an open FDA advisory committee meeting. The guidance announced in this notice finalizes the draft guidance of the same title dated February 2007. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of three additional guidances and one draft guidance, intended to improve FDA's advisory committee procedures.

DATES: The guidance is effective August 5, 2008. Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit telephone requests to 800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy, Planning, and Preparedness (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members,'' dated August 2008. This guidance is intended to provide information to industry sponsors, applicants, and petitioners on the development, preparation, and submission of briefing materials that will be provided to advisory committee members as background information prior to open FDA advisory committee meetings. The guidance is intended to help minimize the time and resources spent in preparing such materials for public availability. The guidance also describes the process FDA intends to follow when we make briefing materials available to the public.

An important goal of the guidance is to help ensure that briefing materials are made available to the public in accordance with section 10(b) of the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). We interpret FACA to require that, with respect to any open advisory committee meeting convened under FACA, whenever practicable and subject to any applicable exemptions under the Freedom of Information Act (FOIA) (5 U.S.C. 552), those materials that we provide to advisory committee members in connection with that meeting must be made available for public inspection and copying either before or at the time of the advisory committee meeting.

In the guidance, the term ''briefing materials'' is used to describe the package of information that FDA provides to advisory committee members before a meeting. The briefing materials for a particular meeting generally include information prepared by FDA and/or the sponsor (if the meeting involves a product application or otherwise involves a particular product). This guidance includes (in the Appendices) timelines for preparing and submitting briefing materials to FDA.

For open advisory committee meetings for which the briefing materials may contain information that, under certain circumstances, could be considered to be exempt from public disclosure under FOIA, we intend to:

- Post a publicly available version of the briefing materials on FDA's Web site at least 2 full business days before the meeting is scheduled to occur.

For meetings for which the briefing materials do not contain information that, under certain circumstances, could be considered to be exempt from public disclosure under FOIA, such as many meetings concerning guidance documents and policy issues, we will try to:

- Make the briefing materials available on FDA's Web site more than 2 full business days before the meeting.

In the **Federal Register** of February 28, 2007 (72 FR 9008), FDA announced the availability of the draft guidance of the same title dated February 2007. FDA received a number of comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. This guidance finalizes the draft guidance and replaces three previously issued draft guidance documents entitled: (1) ''Guidance for Industry: Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000,'' dated December 1999; (2) ''Guidance for Industry: Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of Biologic Products and Convened by the Center for Biologics Evaluation and Research,'' dated February 2001; and (3) ''Availability of Information Given to Advisory Committee Members in Connection With CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff,'' dated July 18, 2001.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. 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 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. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.regulations.gov*.

Dated: August 1, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–17997 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0424] (formerly Docket No. 2007D–0101)

Guidance for the Public, FDA Advisory Committee Members, and FDA Staff on Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for the public, FDA advisory committee members, and FDA staff entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees'' dated August 2008. This guidance describes the factors and analyses that should be used in considering whether an advisory committee member has a potential conflict of interest and whether participation in a meeting is appropriate. This guidance is intended to help the public, FDA advisory committee members, and FDA staff to understand and implement FDA policy in applying the applicable statutory and regulatory requirements. This guidance finalizes the draft guidance of the same title dated March 2007 and replaces the guidance document entitled ''FDA Waiver Criteria 2000.'' Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of three additional guidances, and one draft guidance, intended to improve FDA's advisory committee procedures.

DATES: This guidance is effective for advisory committee meetings scheduled on or after December 3, 2008. Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800—835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy, Planning, and Preparedness (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document, entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff; Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees,'' dated August 2008. FDA's advisory committees provide independent and expert advice on scientific, technical, and policy matters related to the development and evaluation of products regulated by FDA.

FDA is committed to strictly adhering to the laws and regulations governing the process for selecting advisory committee members. FDA for many years has screened, prior to each meeting, all potential members who are special government employees or regular government employees, to determine whether the potential for a financial conflict of interest exists. The agency may grant a waiver to allow an individual to participate in a meeting when statutory criteria are met; for example, when the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved. FDA administers several laws and regulations that govern conflict of interest determinations. The applicable laws have recently changed with the enactment of the Food and Drug Administration Amendments Act (FDAAA). Title VII of FDAAA added section 712 of the Federal Food, Drug, and Cosmectic Act (the act), which became effective October 1, 2007, replaced the conflict of interest provisions in section 505(n)(4) of the act, and introduced new requirements. In addition, the agency must apply 18 U.S.C. section 208, which contains different standards for assessing conflicts of interest. FDA's Waiver Criteria 2000 guidance, which this guidance replaces, attempted to comprehensively address the complex set of variables that can be applied in reaching a determination about an individual advisory committee participant. However, because of its complexity and discretionary elements, FDA staff found it difficult to achieve consistent results that the public could readily understand. As part of FDA's recent internal assessment of its advisory committee process, the agency has targeted its assessment of potential conflicts of interest and granting of waivers as an area that needs improvement. This guidance implements a more stringent approach for considering eligibility for participation in FDA advisory committee meetings. The purpose of this guidance is to simplify and streamline the process by which FDA considers meeting participation, increase the transparency, clarity, and consistency of the process, and enhance public trust in this important function.

In the **Federal Register** of March 23, 2007 (72 FR 13805), FDA announced the availability of the draft guidance of the same title dated March 2007. FDA received a number of comments on the draft guidance and those comments were considered as the guidance was

finalized. In addition, changes necessitated by the enactment of FDAAA were incorporated into the final guidance. A summary of changes includes the following:

- FDA is choosing to limit the waivers the agency grants and harmonize our implementation of the various statutory provisions by applying a generally stricter test for granting waivers than would be required in some cases. FDA will ensure that all waivers meet the standard established by section 712(c)(2)(B) of the act that the waiver is ''necessary to afford the advisory committee essential expertise.''
- The guidance incorporates a progressively more stringent cap on the numbers of waivers issued per fiscal year in accordance with FDAAA.
- Advisory committee members will be considered for meeting participation under a rigorous policy regarding the value of their personal financial interests and those of their immediate family that potentially could be affected by the meeting deliberations. If an individual or his spouse or minor child has disqualifying financial interests whose combined value exceeds $50,000, she generally would not participate in the meeting, regardless of the need for her expertise. Financial interests imputed to the member (e.g., the financial interests of a university that employs the member) are not subject to the $50,000 maximum.
- FDA will not issue a waiver in certain circumstances where the agency has determined that the conflict of interest is significant.
- Waivers may be voting or non-voting at the discretion of the agency.
- Past financial interests that are outside of the scope of 18 U.S.C. 208 and section 712 of the act are not addressed in this guidance.
- New section 712 of the act harmonizes with 18 U.S.C. 208 those exempted interests considered too remote or inconsequential to affect the integrity of the services of advisory committee members; therefore, the guidance incorporates such exemptions.
- The guidance removes references to administrative steps (e.g., submission of internal memoranda) that staff should follow; internal staff instructions will be developed separately.

In addition, editorial changes were made to improve clarity.

This guidance is effective for advisory committee meetings scheduled on or after (see **DATES**). FDA staff begin planning and preparing for advisory committee meetings well in advance of the meeting date, in order to initiate and complete conflict of interest screening, among other things, for potential advisory committee participants. Accordingly, while staff will begin using the guidance directly, its impact on advisory committee meetings will not be fully apparent until 120 days after publication.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on procedures for considering conflict of interest and eligibility for participation in FDA advisory committees. 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, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

III. Electronic Access

Persons with access to the Internet may obtain the document at: *http://www.fda.gov/ohrms/dockets/default.htm*

Dated: July 31, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–17998 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–D–0094] (formerly Docket No. 2002D–0049)

Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for the public, FDA advisory committee members, and FDA staff entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers.'' This guidance is intended to help the public, FDA advisory committee members, and FDA staff to understand and implement FDA procedures regarding public availability of information regarding certain financial interests and waivers granted by FDA to permit individuals to participate in an advisory committee meeting. The guidance announced in this notice finalizes the draft guidance of the same title dated October 2007 and FDA's ''Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees'' dated January 2002. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of three additional guidances, and one draft guidance, intended to improve FDA's advisory committee procedures.

DATES: The guidance is effective August 5, 2008. Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy, Planning, and Preparedness (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers,'' dated August 2008. FDA's advisory committees provide independent and expert advice on scientific, technical, and policy matters related to the development and evaluation of products regulated by FDA. FDA implements a rigorous process for soliciting and vetting candidates for advisory committee meetings to minimize any potential for financial conflicts of interest. The agency is authorized by statute to grant waivers to allow individuals with potentially conflicting financial interests to participate in meetings where we conclude, after close scrutiny, that certain criteria are met. See 18 U.S.C. 208(b)(1), (b)(3) and section 712(c)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (added by the Food and Drug Administration Amendments Act of 2007, Public Law No. 110–85, section 701 (effective October 1, 2007)).

In January 2002, FDA issued ''Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees,'' and requested comments on the draft guidance (Docket No. 2002D–0049). The draft guidance was limited in application to Special Government Employees (SGEs) participating in advisory committee meetings at which particular matters relating to particular products were discussed.

FDA has recently undertaken an internal assessment of its advisory committee process. As a result of this review, and based on the comments submitted to the docket for the January 2002 draft guidance, FDA has revised the 2002 draft guidance to broaden its applicability, to bring as much transparency as possible to FDA's waiver process, and to increase the consistency and clarity of the process. The guidance revises procedures, consistent with section 712(c)(3) of the act, to make publicly available relevant information regarding financial interests and waivers granted by the agency for SGEs and regular Government employees invited to participate in FDA advisory committee meetings.

The guidance also includes a template for disclosing to the public the disqualifying financial interests for which waivers are sought and a template for all waivers that FDA grants. The guidance further describes FDA's process for making these documents available on its Web site in advance of each advisory committee meeting.

In the **Federal Register** of October 31, 2007 (72 FR 61657), FDA announced the availability of the draft guidance of the same title dated October 2007. FDA received one comment on the draft guidance generally supporting the guidance. Editorial changes were made to improve clarity.

This guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance document represents the agency's current thinking on public availability of information regarding advisory committee members' financial interests and waivers granted by FDA to permit participation in advisory committee meetings. 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, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/opacom/morechoices/industry/guidedc.htm* or *http://www.regulations.gov*.

Dated: July 31, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–17999 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0434]

Draft Guidance for Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators, and Food and Drug Administration Staff; Humanitarian Device Exemption Regulation: Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Humanitarian Device Exemption (HDE) Regulation: Questions and Answers.'' This draft guidance answers commonly asked questions about Humanitarian Use Devices (HUDs) and applications for HDE. This draft guidance is neither final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 3, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Humanitarian Device Exemption (HDE) Regulation: Questions and Answers'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this 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.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4036.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance answers commonly asked questions about HUDs and applications for HDE authorized by section 510(m)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(m)(2)). This update of the version issued in 2006 reflects the additional requirements set forth in the Pediatric Medical Device Safety and Improvement Act of 2007 (Public Law 110–85). The Pediatric Medical Device Safety and Improvement Act of 2007 includes a provision requiring that all original HDE applications include both a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients (new 515A(a)(2) of the act). It also amends section 520(m) of the act (21 U.S.C. 360j(m)) to exempt some HUDs from the prohibition on profit (new section 520(m)(6) of the act). Specifically, HDE applications indicated for use in pediatric patients that are approved on or after September 27, 2007, may be assigned an annual distribution number (ADN) and be sold for profit, subject to certain restrictions. Finally, the Pediatric Medical Device Safety and Improvement Act of 2007 includes a provision requiring that the agency provide guidance to Institutional Review Boards (IRBs) on the review of HUDs. This update of the HDE guidance includes 30 specific questions and answers for IRBs, as well as guidance to HDE holders on whether and how they may become eligible to receive profit from the sale of their device.

II. Significance of Guidance

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 the aspects of HDE regulation discussed in the guidance. 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 statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Humanitarian Device Exemption (HDE) Regulation: Questions and Answers,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1666 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Pediatric Use Information to Accompany Humanitarian Device Exemption Applications.

Description: Title III of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) amended chapter V of the act (21 U.S.C. 351 *et seq.*) by inserting section 515A Pediatric Uses of Devices (21 U.S.C. 360e-1).

This new provision requires that new applications under section 520(m) of the act include both a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients.

Title III of FDAAA also amended section 520(m) of the act as follows:

- Section 520(m)(6)(A)(ii) provides that the Secretary of Health and Human Services will assign an annual distribution number for devices indicated for use in pediatric patients or in a pediatric subpopulation. The ADN shall be based on the following information in an HDE application: (1) the number of individuals affected by the disease or condition that such device is intended to treat, diagnose, or cure, and of that number; (2) the number of individuals likely to use the device; and (3) the number of devices reasonably necessary to treat such individuals.
- Section 520(m)(6)(A)(iii) provides that an HDE holder immediately notify the agency if the number of devices distributed during any calendar year exceeds the annual distribution number.
- Section 520(m)(6)(C) provides that an HDE holder may petition to modify the annual distribution number if additional information on the number of individuals affected by the disease or condition arises.

The proposed collections of information are necessary to satisfy the previously mentioned statutory requirements.

Respondents to this collection of information are holders of HDEs

indicated for use in pediatric patients or in a pediatric subpopulation that were approved on or after September, 27, 2007, the enactment date of the Pediatric Medical Device Safety and Improvement Act of 2007.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section of the Federal Food, Drug, and Cosmetic Act	No. of Applicants	Annual Frequency per Response	Total Annual HDE Applications	Hours per Response	Total Hours
515A(a)(2)	5	1	5	100	500
520(m)(6)(A)(ii)	3	1	3	50	150
520(m)(6)(A)(iii)	1	1	1	100	100
520(m)(6)(C)	5	1	5	100	500
Total					1,250

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of original HDE applications that the Center for Devices and Radiological Health (CDRH) received in the period between October 1, 2004, and September 30, 2007. During that time, CDRH received 16 original HDE applications or about 5 per year.

FDA estimates that for each year CDRH will receive five HDE applications and that three of these applications will be indicated for pediatric use. One HDE holder will notify the agency that the number of devices distributed in the year has exceeded the annual distribution number and five HDE holders will petition to have the annual distribution number modified due to additional information on the number of individuals affected by the disease or condition.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A, B, and C have been approved under OMB control number 0910–0231; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332; and the collections of information in 21 CFR 10.30 have been approved under OMB control number 0910–0183.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: July 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17905 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0386]

International Conference on Harmonisation; Draft Guidance on E2F Development Safety Update Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''E2F Development Safety Update Report.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes the format, content, and timing of a development safety update report (DSUR) for an investigational drug. The DSUR would serve as a harmonized, annual clinical trial safety report that would be standard among the three ICH regions. The DSUR could be submitted in the United States in place of an annual report for an investigational new drug application (IND). The harmonized DSUR is intended to promote a consistent approach to annual clinical safety reporting among the ICH regions and enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 3, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike,

suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guidance: Ellis F. Unger, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4170, Silver Spring, MD 20993, 301–796–2240; or

Peter F. Bross, Center for Biologics Evaluation and Research (HFM–755), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5102.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''E2F Development Safety Update Report'' should be made available for public comment. The draft guidance is the product of the E2F Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group.

The draft guidance describes the format, content, and timing of a DSUR for an investigational drug. The DSUR would serve as a harmonized, annual clinical trial safety report that would be standard among the ICH regions. The DSUR is patterned after the periodic safety update report (PSUR) (used for safety reporting in the postmarketing environment) and could be submitted in the United States in place of an annual report for an IND. The harmonized DSUR is intended to promote a consistent approach to annual clinical safety reporting among the ICH regions and enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

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 this topic. 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 on 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17861 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0396]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4A: Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results

of the ICH Q4B evaluation of the Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is part A of the fourth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4A: Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

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 this topic. 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 on 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

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or *http://www.fda.gov/cber/guidelines.htm*.

Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17862 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0398]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4B: Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is part B of the fourth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4B: Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and

regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

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 this topic. 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 on 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm.*

Dated: July 28, 2008.

Jeffery Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17863 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2008–D–0399]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Disintegration Test General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 5: Disintegration Test General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Disintegration Test General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the fifth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 400N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with

harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 5: Disintegration Test General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Disintegration Test General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

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 this topic. 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 on 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17864 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0400]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4C: Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is part C of the fourth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 6, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the 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.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: Robert H.

King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002,301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1),Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

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SUPPLEMENTARY INFORMATION:

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ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4C: Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

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 this topic. 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 on 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.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

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Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17865 Filed 8–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its fifty-ninth meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: September 24, 2008, 9 a.m.–4:30 p.m.; September 25, 2008, 8:45 a.m.–5:30 p.m.; September 26, 2008, 8:15 a.m.–10 a.m.

Place: Madden's on Gull Lake, 11266 Pine Beach Peninsula, Brainerd, MN 56401, Phone: 800–642–5363.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Wednesday morning, at 9 a.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley. The first presentation will be an overview of rural Minnesota. The Committee will hear presentations on the three chosen Subcommittee topics. The first panel will focus on Workforce and Community Development. Jay Fonkert, with the Minnesota Office of Rural Health and Primary Care, and Valerie DeFor, Director of the Healthcare Education Industry Partnership, are confirmed speakers. The second panel of speakers will lead a discussion on Serving At-Risk Children with a representative from the Minnesota Early Childhood Comprehensive System. The final panel for the day is on the Medical Home Model, with Scott Leitz, Assistant

Commissioner of the Minnesota Department of Health, as a confirmed speaker. After the panel discussions, the Committee Chair will give an overview of the site visits. The Wednesday meeting will close at 4:30 p.m.

Tuesday morning, at 8:45 a.m., the Committee will break into Subcommittees and depart to the site visits. The Workforce and Community Development Subcommittee will learn about the Bridges to Excellence Program and a cross-training program for paramedics in Crosby, Minnesota. The Serving At-Risk Children Subcommittee will learn about child welfare, family support and prevention initiatives in rural Minnesota. The Medical Home Subcommittee will visit a medical home model at Lakewood Health System in Staples, Minnesota. Transportation to the site visits will not be provided to the public. At 4 p.m. the Subcommittees will arrive back at Madden's on Gull Lake for Subcommittee meetings. The Committee as a whole will reconvene at 4:45 p.m. There will be a review of the site visits and action items will be developed for the Committee members and staff. The meeting will be adjourned at 5:30 p.m.

The final session will be convened on Friday morning, at 8:15 a.m. Those available from the Committee will meet to discuss topic ideas for the next report. The Friday meeting will adjourn at 10 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Chang, MPH, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), Telephone: (301) 443–0835. The Committee meeting agenda will be posted on ORHP(s Web site: *http://www.ruralhealth.hrsa.gov*.

Dated: July 29, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–17850 Filed 8–4–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 9–10, 2008.

Open: September 9, 2008, 8:30 a.m. to 1 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 9, 2008, 1 p.m. to 5 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 10, 2008, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Dennis R. Lang, PhD., Acting Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233/EC–3431, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–7729, *lang4@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17728 Filed 8–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel: MIDARP.

Date: August 19, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health HHS)

Dated: July 29, 2008.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17819 Filed 8–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–MB–2008–N0153; 80213–9410–0000–7B]

Federal Sport Fish Restoration; California Department of Fish and Game Fish Hatchery and Stocking Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a joint environmental impact statement/environmental impact report (EIS/EIR); announcement of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), intend to serve as the lead agency, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, in the preparation of a joint EIS/EIR for the California Department of Fish and Game's (CDFG) Fish Hatchery and Stocking Program (Program). Under the Sport Fish Restoration Act (SFRA), FWS currently proposes to fund actions associated with the operation of CDFG's 13 trout hatcheries (listed below) and the Mad River anadromous fish hatchery, including stocking from those 14 hatcheries. The Federal action would not include funding CDFG's private stocking permit program. The CDFG will serve as the lead agency under the California Environmental Quality Act (CEQA) analyzing the hatcheries' operations funded by the SFRA, as well as CDFG's entire fish hatchery program. This notice announces two public scoping meetings on our intended actions.

DATES: Two public scoping meetings will be held to solicit public input on the alternatives, concerns, and issues to be addressed in the EIS/EIR. The meeting dates are:

1. Monday, September 8, 2008, from 4 to 6:30 p.m., Sacramento, California.
2. Thursday, September 11, 2008, from 5:30 to 7:30 p.m., Carson, California.

ADDRESSES: The public scoping meeting locations are:

1. Sacramento—Tsakopoulos Library Galleria, Main Floor, 828 I Street, Sacramento, CA 95814.
2. Carson—Carson Community Center, First Floor, Adult Activities Room, 3 Civic Plaza Drive, Carson, CA 90745.

Send comments on the scope of the EIS/EIR to Ms. Jill Wright, Fish and Wildlife Service, 2800 Cottage Way, Suite W–2606, Sacramento, CA 95825; via e-mail to *dfghatcheryeir@dfg.ca.gov;* or via fax to (916) 978–6155.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Wright, (916) 978–6182.

SUPPLEMENTARY INFORMATION: FWS intends to serve as the lead agency in the preparation of a joint EIS/EIR for CDFG's Program. Under the SFRA, FWS has the authority to approve grants and provide Federal funds to support actions associated with the Program. FWS currently proposes to fund the 13 trout hatcheries (listed below) and the Mad River anadromous fish hatchery. The combined EIS/EIR document will provide NEPA compliance for the FWS's discretionary action regarding the issuance of Federal funds under the SFRA to support these hatchery operations, including stocking, which provides freshwater angling opportunities and recreation throughout the State. The Federal action does not include funding CDFG's private stocking permit program.

The CDFG will serve as the lead agency under the California Environmental Quality Act (CEQA) analyzing the hatcheries' operations funded by the SFRA, as well as its entire CDFG fish hatchery program. The purpose of CDFG's Program is to implement the requirements of AB 7 (2005), which requires certain production amounts of trout from CDFG hatcheries, as well as to comply with a court order regarding the adequacy of environmental review of CDFG's continuing hatcheries program, which stocks various trout species, one species of char, and anadromous fish species in the inland waters of California.

The CDFG has been rearing and stocking fish in the inland waters of California since the late 1800s, when the State of California enacted legislation to restore and preserve fish in State waters. This legislation called for the newly formed California State Fish and Game Commission, to establish ''fish breederies'' to stock and supply streams, lakes, and bays with both foreign and domestic fish. Since that time in the late 1800s, the CDFG has continued that mandate by rearing and stocking both inland and anadromous species of fish reared at 21 hatcheries and planting bases located throughout the State.

The CDFG is proposing to continue this objective of stocking hatchery-reared inland and anadromous fish for the recreational use of anglers, per the requirements of AB 7 and subject to the mandates of the court order, while balancing the interaction between hatchery-stocked fish and threatened and endangered species, and other environmental effects. Hatchery operations and stocking activities associated with the CDFG's inland water hatchery program will be evaluated for their effects on the environment, including potential impacts to native species, such as native amphibians, which have recently experienced a decline within the State of California.

The CDFG will also evaluate its issuance of stocking permits to private parties seeking to stock fish in California's inland waters. However, activities associated with CDFG's permitting of private stocking are not eligible for Federal funding under the SFRA and are not within the scope of the NEPA action.

The CDFG currently operates 13 trout hatcheries and 8 anadromous fish hatcheries throughout the State, rearing 5 trout species and 3 salmon species. The trout species include rainbow, brown, brook, cutthroat, and golden. The salmon species include Chinook, Coho, and Kokanee. Operations associated with 1 anadromous (Mad River) and all 13 trout hatcheries are eligible for SFRA grants from FWS.

The trout hatcheries are:

Mount Shasta (Siskiyou County), #3 North Old Stage Road, Mt. Shasta, CA 96067.

Darrah Springs (Tehama County), 29661 Wildcat Road, Paynes Creek, CA 96075.

Crystal Lake (Shasta County), 40158 Baum Lake Road, Cassel, CA 96016.

American River (Sacramento County), 2001 Nimbus Road, Gold River, CA 95670.

Moccasin Creek (Tuolumne County), Highway 49 and 120, Moccasin, CA 95347.

Hot Creek (Mono County), 85 Old School Road, Mammoth Lakes, CA 93546.

Fish Springs (Inyo County), 215 Fish Springs Road, Big Pine, CA 93513.

Mount Whitney (Inyo County), #1 Golden Trout Circle, Independence, CA 93526.

Black Rock Fish Hatchery (Inyo County) Annex of Mount Whitney Hatchery, 1 East Black Rock Springs Road, Independence, CA 93526.

San Joaquin (Fresno County), 17372 Brook Trout Drive, Friant, CA 93626.

Fillmore (Ventura County), 612 East Telegraph Road, Fillmore, CA 93016.

Mojave (San Bernardino County), 12550 Jacaranda Avenue, Victorville, CA 92395.

Kern River Planting Base (Kern County), 14400 North Sierra Way, Kernville, CA 93238.

Silverado Planting Base (Napa County), 7329 Silverado Trail, Yountville, CA 94599.

The anadromous fish hatcheries are:

Iron Gate (Siskiyou County), 8638 Lakeview Road, Hornbrook, CA 96044.

Mad River (Humboldt County), 1660 Hatchery Road, Arcata, CA 95521.

Trinity River (Trinity County), 1000 Hatchery Drive, Lewiston, CA 96052.

Feather River (Butte County), 5 Table Mountain Blvd., Oroville, CA 95965.

Feather River Thermalito Annex (Butte County), 4700 Highway 99, Oroville, CA 95965.

Warm Springs (Sonoma County), 3246 Skaggs Springs Road, Geyserville, CA 95441.

Nimbus (Sacramento County), 2001 Nimbus Rd., Ste. F, Gold River, CA 95670.

Mokelumne (San Joaquin County), 25800 North McIntire Road, Clements, CA 95227.

Merced River (Merced County), 4998 Robinson Road, Snelling, CA 95369.

Over the past 6 years, the CDFG has planted over 49 million combined salmon and trout in hundreds of locations, including some high mountain lakes, low elevation reservoirs, and various streams and creeks. It is anticipated that the production of trout species will increase as a result of the implementation of AB 7. This increase in production will be achieved through options within the existing hatchery system and through the continued assistance of SFRA funding. If the SFRA funding is withdrawn, it may be necessary for CDFG to cut other activities to meet the AB 7 fish production goals. The CDFG has also issued approximately 80 private stocking permits annually, with the majority being issued to individuals stocking rainbow, brook and brown trout; channel and bullhead catfish; large mouth bass; white and black crappie; bluegill; redear; mosquito-fish; white and green sturgeon; and triploid grass carp.

Purpose and Need

The EIS must explain the underlying purpose and need to which the Lead Agency is responding in proposing the action. The purpose of this FWS action is to provide Federal SFRA funds to CDFG to support actions associated with their fish hatchery and stocking program (the 13 trout hatcheries (listed above) and the Mad River anadromous fish hatchery) to provide sportfishing recreation in California. The funds are needed to support angler success within both urban and rural waterbodies. SFRA funds will not, however, be used to support private stocking permits.

Alternatives

Proposed Action Alternative

Under the proposed action, FWS will continue to provide funding for CDFG's 13 hatcheries and the Mad River anadromous fish hatchery.

No Action Alternative

Under the No Action Alternative, the FWS would not approve SFRA grant funds to be used by CDFG to support actions associated with the operations of their fish hatcheries and fish stocking program. Because of the State statutory and public trust requirements related to the hatchery program, CDFG would attempt to continue to implement its State hatchery program, seeking other funding sources to replace the Federal funds.

Other Alternatives

In the EIS, FWS will consider a range of alternatives that could accomplish the proposed action's purpose and need. FWS will be rigorously exploring and objectively evaluating a reasonable range of alternatives with the proposed action and no action alternatives, taking into account the feasibility of the alternatives, as well as the ability to address significant impacts on the human environment.

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Ms. Jill Wright, (916) 978–6182, or via e-mail at *Jill_Wright@fws.gov*. Please notify Ms. Wright as far in advance of the meetings as possible to enable the Service to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 30, 2008.

Tom McCabe,

Acting Deputy Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–17910 Filed 8–4–08; 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 Tribal-State Compact Taking Effect.

SUMMARY: Notice is given that the State of Oklahoma and the Quapaw Tribe of Oklahoma (O–GAH–PAH) Off-Track Wagering Compact is considered approved and is in effect.

DATES: *Effective Date:* August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Mailstop 3657—Main Interior Building, 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 approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. Pursuant to 25 U.S.C. 2710(d)(8)(D), compacts that are approved or considered to have been approved are effective upon publication of a notice thereof in the **Federal Register**. No action was taken to approve or disapprove this Compact within forty-five (45) days of its submittal to the Secretary for approval; therefore, in accordance with 25 U.S.C. 2710(d)(8)(C), this Compact is considered to have been approved by the Secretary, but only to the extent that it is consistent with the provisions of the IGRA.

Dated: July 28, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8–17851 Filed 8–4–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5

CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a reinstatement, with change, of a previously approved collection of information for which approval has expired (OMB #1024–0216).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 4, 2008.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Jennifer Hoger Russell, Park Studies Unit, College of Natural Resources, University of Idaho, P.O. Box 44139, Moscow, ID 83844–1139; *Phone:* 208/885–4806; *Fax:* 208/885–4261; *E-mail: jhoger@uidaho.edu*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/*.

Comments Received on the 60-Day ***Federal Register*** *Notice:* The NPS published a 60-day notice to solicit public comments on this ICR in the **Federal Register** on May 13, 2008 (Vol. 73, No. 93, Page 27553–27554). The comment period closed on July 14, 2008. After notification to stakeholders requesting comments, the NPS received one comment as a result of the publication of this 60-day **Federal Register** notice.

The commenter suggested that the program should be shut-down to avoid wasteful spending. The NPS replied to the comment, indicating that the VSC Project is how the NPS complies with the Government Performance and Results Act of 1993. In compliance with this law, the NPS implemented the project in 1998. The project continues to be the only source of visitor satisfaction information across the entire system on an annual basis. Parks collect valuable information about visitor satisfaction with facilities, services, and recreational opportunities available at all the NPS sites across the country, Guam, Puerto Rico, and the Virgin Islands.

SUPPLEMENTARY INFORMATION:

Title: National Park Service Visitor Survey Card.

Bureau Form Number: None.

OMB Number: 1024–0216.

Expiration Date: To be requested.

Type of Request: Reinstatement, with change, of a previously approved collection of information for which approval has expired.

Description of Need: The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.*, requires that the NPS preserve national parks for the use and enjoyment of present and future generations. At the field level, this means resource preservation, public education, facility maintenance and operation, and physical developments as are necessarily for public use, health, and safety. Other federal rules (National Environmental Policy Act, 1969 and NPS Management Policies) require visitor use data in the impact assessment of development on users and resources as part of each park's general management plan. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62) requires that the NPS develop goals to improve program effectiveness and public accountability and to measure performance related to these goals. The Visitor Survey Card (VSC) Project measures performance toward those goals through a short visitor survey card. The project is an element of the NPS Strategic Plan and the Department of the Interior (DOI) Strategic Plan.

The NPS has used the VSC to conduct surveys at approximately 330 National Park System units annually since 1998. The purpose of the VSC is to measure visitors' opinions about park facilities, services, and recreational opportunities in each park unit and System wide. This effort is required by GPRA and other NPS and DOI strategic planning efforts. Data from the proposed survey is needed to assess performance regarding NPS GPRA goals IIa1 and IIb1.

The relevant NPS GPRA goals state:

II. Provide for the public enjoyment and visitor experience of parks;

IIa1. 95% of park visitors are satisfied with appropriate park facilities, services, and recreational opportunities;

IIb1. 86% of park visitors understand and appreciate the significance of the park they are visiting.

In addition, the survey collects data to support the DOI Strategic Plan goal on visitor satisfaction with the value for entrance fees paid to access public lands managed by the DOT. NPS performance on all goals measured in this study will contribute to DOT Department-wide performance reports. Results of the VSC will also be used by park managers to improve visitor services at the approximately 330 units of the National Park System where the survey is administered.

The VSC is a component of the Visitors Services Project, which is funded by the NPS through a cooperative agreement with the Park Studies Unit at the University of Idaho. In 1998, the NPS received clearance for the Visitor Survey Card (OMB #1024–0216). When that three-year clearance expired on May31, 2001, a new clearance was acquired under the Programmatic Approval for NPS-Sponsored Public Surveys (1024–0224, NPS #01–003). Clearance was again acquired in 2005 under Programmatic Approval for NPS-Sponsored Public Surveys (1024–0224, NPS #05–004). This request is another extension of the on-going study. The obligation to respond is voluntary.

Automated Data Collections: This information will be collected via mail-back surveys and on-site drop-off surveys using locked collection boxes. No automated data collection will take place.

Description of Respondents: Visitors to approximately 330 NPS units.

Estimated Average Number of Respondents: 132,000 respondents (94,000 non-respondents and 38,000 respondents).

Estimated Average Number of Responses: 132,000 responses (94,000 non-responses and 38,000 responses).

Estimated Average Burden Hours per Response: 1 minute for non-respondents and3 minutes for respondents.

Frequency of Response: 1 time per respondent.

Estimated Total Annual Reporting Burden: 3,467 hours.

Comments Are Invited On: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being gathered; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information. Before including your address, phone number, e-mail address, or other personal identifying infonnation in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that OMB will be able to do so.

Dated: July 2, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–17785 Filed 8–4–08; 8:45 am]

BILLING CODE 4312–52–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–450 and 731–TA–1122 (Final)]

Laminated Woven Sacks from China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of laminated woven sacks, provided for in subheading 6305.33.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted these investigations effective June 28, 2007, following receipt of a petition filed with the Commission and Commerce by the Laminated Woven Sacks Committee, an ad hoc committee composed of five U.S. producers of laminated woven sacks. Members of the Laminated Woven Sacks Committee are: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of laminated woven sacks from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 15, 2008 (73 FR 8902). The hearing was held in Washington, DC, on June 17, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 30, 2008. The views of the Commission are contained in USITC Publication 4025 (July 2008), entitled *Laminated Woven Sacks from China: Investigation Nos. 701–TA–450 and 731–TA–1122 (Final).*

By order of the Commission.

Issued: July 30, 2008,

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–17867 Filed 8–4–08; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also determined unanimously that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to affirmative critical circumstances determinations by Commerce.

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–021]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 7, 2008 at 11 a.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. Nos. 701–TA–457 and 731–TA–1153 (Preliminary) (Certain Tow-Behind Lawn Groomers and Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before August 8, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 15, 2008.)

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: July 29, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–17889 Filed 8–4–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the Section 904 Violence Against Women in Indian Country Task Force (hereinafter ''the Task Force'').

DATES: The meeting will take place on August 20, 2008 from 8:30 a.m. to 5 p.m. and on August 21, 2008 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530. The public is asked to pre-register by August 14, 2008 for the meeting due to security and seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; *by telephone at:* (202) 514–8804; *e-mail: Lorraine.edmo@usdoj.gov*; or *fax:* 202 307–3911. You may also view information about the Task Force on the Office on Violence Against Women Web site at: *http://www.ovw.usdoj.gov/siw.htm.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005) requires the Attorney General to establish a Task Force to assist the National Institute of Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, and murder. The program will evaluate the effectiveness of the Federal, state, and tribal response to violence against Indian women, and will propose recommendations to improve the government response. The Attorney General, acting through the Director of

the Office on Violence Against Women, established the Task Force on March 31, 2008.

This meeting will be the first meeting of the Task Force and will include introductions of the Task Force Members and Federal representatives, an overview of research on violence against American and Alaska Native women and of evaluations concerning efforts to respond to such crimes, and a Task Force Member discussion on the research and evaluation goals of the Task Force. The Task Force is also expected to hear from additional invited speakers who will provide information on research on violence against American Indian and Alaska Native women. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved an estimated 90 minutes for this purpose. Members of the public wishing to address the Task Force must contact Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; *by telephone at:* (202) 514–8804; *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911. (see below for additional information).

The meeting will take place on August 20, 2008 from 8:30 a.m. to 5 p.m. and on August 21, 2008 from 8:30 a.m. to 5 p.m. and will include breaks and working lunches. Time will be reserved for public comment on August 21, 2008 from 8:30 a.m. to 10 a.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the start of the meeting.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911 no later than August 11, 2008. After this date, we will attempt to satisfy accommodation requests but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by August 11, 2008 to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; or by *e-mail: Lorraine.edmo@usdoj.gov;* or by *fax:* 202 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting are requested to reserve time on the agenda by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911 before August 11, 2008, will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the Section 904 Violence Against Women in Indian Country Task Force, to the attention of Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC, 20530.

Dated: July 28, 2008

Cindy Dyer,

Director, Office on Violence Against Women.

[FR Doc. E8–17950 Filed 8–4–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,649]

CFM U.S. Corporation Huntington, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 8, 2008 in response to a petition filed by a company official on behalf of workers of CFM U.S. Corporation, Huntington, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17882 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,243]

Leiner Health Products, LLC, Including On-Site Leased Workers From Action Staffing Groups of Wilson and Kelly Services, Inc., Wilson, NC; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2008 in response to a petition filed by a company official on behalf of workers of Leiner Health Products, LLC, including on-site leased workers from Action Staffing Groups of Wilson and Kelly Services, Inc., Wilson, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this, 24th day of July, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17885 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,605]

CPU2, LLC, Arden, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 26, 2008 in response to a worker petition filed by a company official on behalf of workers of CPU2, LLC, Arden, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17887 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,648]

Hanesbrands Inc., Oak Summit Division, Winston-Salem, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 8, 2008 in response to a worker petition filed on behalf of workers of Hanesbrands Inc., Oak Summit Division, Winston-Salem, North Carolina.

The petitioning group of workers is covered by an active certification, (TA–W–61,962A) which expires on September 13, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17888 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,853]

Irving Forest Products, Nashville Plantation, Maine; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 12, 2008, the United Steel Workers, Local 4–1310 (the Union) requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Irving Forest Products, Nashville Plantation, Maine (the subject firm). The determination was signed on May 30, 2008. The Department's Notice of determination was published in the **Federal Register** on June 16, 2008 (73 FR 34044). The workers produce lumber and woodchips, and are not separately identifiable by product line.

The denial was based on the Department's findings that the subject firm did not import lumber or woodchips and did not shift production of lumber or woodchips to a foreign country during the relevant period.

A survey of the subject firm's major declining customers regarding their purchases of lumber and woodchips revealed that most customers decreased imports during the relevant period and that any imports did not contribute importantly to subject firm sales and production declines.

Aggregate U.S. imports of coniferous lumber declined in 2007 compared with 2006, and continued to decline in January 2008 compared with the corresponding 2007 period. Aggregate U.S. imports of both coniferous and non-coniferous wood in chips or particles declined in 2007 compared with 2006, and declined in January through February 2008 over the corresponding 2007 period.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

In the request for reconsideration, the Union asserts the following three points:

(1) With regards to the TAA group eligibility requirements for directly-impacted workers, ''the reasons for denial are unfair as it relates to choosing 1 area from each section when only the criteria from one section needs to be met'';

(2) ''We feel it is inaccurate to first look at the entire United States aggregate imports of coniferous lumber'' because in order ''for the Trade Act to protect the workers that it is intended to protect it should be pliable in its review as it relates to specific regions'' and that the Department's review should consider that ''trade may only have slowed over the past 12 months due to high transportation costs as well as equalizing the value of the dollar while discounting the impact trade has had leading up to the devastation of the lumber industry all along the eastern seaboard''; and

(3) The Department failed to receive information from the subject firm regarding ''the possible shift or planned shift in production from its Nashville Plantation, Maine mill to its other facilities''.

In order to apply for TAA, petitioners must satisfy the group eligibility requirements for directly-impacted (primary) workers under Section 222(a) the Trade Act of 1974, as amended. The group eligibility requirements can be satisfied in one of two ways, either Section (a)(2)(A) or Section (a)(2)(B).

In order to satisfy Section (a)(2)(A), all of the following criteria must be met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

In order to satisfy Section (a)(2)(B), all of the following criteria must be met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with

articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The Union appears to assert that because the Department identified in the negative determination two criteria that were not met, the Department requires that, in order for a worker group to be certified for TAA, both of the aforementioned sections must be met.

In determining whether a worker group has met the criteria set forth in the Trade Act of 1974, as amended, the Department investigates whether the worker group has met the criteria of either Section (a)(2)(A) or Section (a)(2)(B), not both. If the criteria of either Section are met, the Department will certify the worker group as eligible to apply for TAA.

The Union asserts that it is unfair that the Department considers only ''United Stated aggregate imports'' because to do so would discount the disproportionate impact that imports have on a specific region, such as the Eastern Seaboard.

Section (a)(2)(A)(C) requires that there be a finding of increased imports. 29 CFR section 90.2 states that ''increased imports means that imports have increased either absolutely or relatively to domestic production compared to a representative bade period.'' As asserted by the Union, imports did not increase in 2007 compared to 2006. Absent a finding of increased imports, the Department cannot determine whether or not increased imports contributed importantly to subject firm sales and/or production declines and worker separations.

Section (a)(2)(B)(B) requires that there ''has been'' a shift of production. That the requirement is in the past tense means that the shift is an event in the past and not in the future. Therefore, the subject firm's ''possible shift or planned shift'' (if any) would not have been a basis for TAA certification.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 28th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17884 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,287]

Paulstra CRC Sales Office, Novi, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked July 1, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 19, 2008 and published in the **Federal Register** on June 3, 2008 (73 FR 31716).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Paulstra CRC, Sales Office, Novi, Michigan was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner stated that the workers of the subject firm were Customer Service Representatives and that their job duties directly supported production at Paulstra CRC. The petitioner further stated that the duties of a Customer Service Representative were to input orders, schedule delivery, customer negotiations, price negotiations, etc. and that ''without these functions there would not have been any production.'' The petitioner alleged that because other facilities of Paulstra CRC had been certified eligible for TAA, workers of the Sales Office who are engaged in sales and customer support services should be certified eligible for TAA.

A review of the initial investigation confirmed that the workers of the subject facility support production at Paulstra CRC, Grand Rapids, Michigan, (TA–W–61,908) during the relevant period. The above mentioned production facility was certified eligible for adjustment assistance on September 24, 2007.

However, the investigation also revealed that only one worker was separated from the Sales Office since April 2007 and there was no threat of future separations.

The subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers in a firm or appropriate subdivision means at least three workers in a workforce of fewer than 50 workers, five percent of the workers in a workforce of over 50 workers, or at least 50 workers. Therefore, the subject facility did not meet the threshold of employment declines and there was no threat of separations during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 28th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17886 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,601]

Intel Corporation, Fab 23, Colorado Springs, CO; Notice of Revised Determination on Remand

On June 6, 2008, the Department of Labor issued a Notice of Negative Determination on Remand pursuant to the March 24, 2008 order issued by the U.S. Court of International Trade (USCIT) in *Former Employees of Intel Corporation* v. *U.S. Secretary of Labor*, Court No. 07–00420. The Notice of determination was published in the **Federal Register** on June 16, 2008 (73 FR 34045).

On May 30, 2007, an official of Intel Corporation, Fab 23, Colorado Springs, Colorado (the subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of the subject firm. The official stated that the subject firm produced ''WiFi products'' for Intel Corporation (Intel) and communication microprocessors for a company that replaced purchases from the subject firm with imported products.

During the initial investigation, the subject firm official stated that the subject firm produced ''silicon wafers'' and that the worker separations were due to the subject firm's customer shifting to another company. AR 12. The company official further stated that the subject firm shifted silicon wafer production to Taiwan. AR 13.

The Department's Notice of negative determination, issued on June 15, 2007, stated that sales and production for silicon wafers increased in 2005, 2006, and year to date 2007, that the subject firm did not import silicon wafers, and that the subject firm did not shift production of silicon wafers to a foreign country during the relevant period. AR 23–25. The Department's Notice of determination was published in the **Federal Register** on June 28, 2007 (72 FR 35517). AR 26–30.

In a July 14, 2007 letter, a displaced worker requested administrative reconsideration. AR 39. The request alleged that the subject workers are de facto employees of another company (Marvel); the subject firm did not produce silicon wafers but ''manufactures electronic circuits * * * on a silicon wafer''; subject firm production has been replaced with imports; the subject workers are eligible for TAA as secondarily-affected workers; and Marvel's shift of production to Taiwan is a basis for TAA certification of the subject workers. AR 40–43.

During the reconsideration investigation, the Department contacted the subject firm and received significant information about Intel's semiconductor chip production process. AR 57, 65, 66, 74, 101, 113.

During the reconsideration investigation, the Department confirmed that a company, Marvel, purchased from Intel the rights to the Hermon chip, and that, under the agreement, the subject firm would produce silicon wafers bearing the Hermon chip until Marvel's Taiwanese supplier was fully operational. The Department also confirmed that the subject firm ceased production in April 2007 and the last shipment of silicon wafers from the subject firm to Marvel was in the second quarter of 2007. AR 54–55. Further, the Department confirmed that the articles produced at the subject firm were silicon wafers bearing ''WiFi semiconductor chips.'' AR 57.

During the reconsideration investigation, the Department ascertained that the subject firm did not shift production to a country that is a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act. AR 55, 56, 70, 101. The Department confirmed that the articles imported by Intel are not silicon wafers bearing semiconductor chips, dies, or packaged dies, but are WiFi cards. AR 101–102.

The negative determination on reconsideration, issued on September 26, 2007, stated that the subject firm produced silicon wafers and explained that the subject workers cannot be certified for TAA based on a shift of production to Taiwan absent evidence of increased imports (actual or likely) of like or directly competitive articles following the shift of production to another country. The determination also stated that the subject workers are not secondary workers because the subject firm neither supplied a component part to a buyer nor finished or assembled a final product for a buyer. AR 114–120. The Department's Notice determination was published in the **Federal Register** on October 3, 2007 (72 FR 56387). AR 121–123.

By letter to the USCIT, dated November 5, 2007, former workers of the subject firm requested judicial review.

On March 24, 2008, the USCIT granted the Department's request for voluntary remand, and directed the Department to determine whether, following the subject firm's shift of semiconductor wafer production to a foreign country, there were (actual or likely) increased imports of articles like or directly competitive with those produced by the subject firm.

Because the subject firm ceased production in April 2007, the Department determined, during the remand investigation, that the TAA criteria regarding significant worker separations and subject firm sales and/or production declines were met. Further, because the subject firm had shifted semiconductor wafer production to a foreign country, the Department determines that the TAA criterion regarding a shift of production was met.

Therefore, the focus of the remand investigation was limited to whether the subject worker group had satisfied either (1) the criterion that increased imports of articles like or directly competitive with semiconductor wafers produced by the subject workers contributed importantly to subject firm sales and/or production declines and worker separations, or (2) the criterion that the shift of semiconductor wafer production was to a qualified country and/or there were actual or likely increased imports of semiconductor wafers following the shift of production to a foreign country.

Based on information obtained in the remand investigation, the Department determined that the alleged imports are not like or directly competitive with the semiconductor wafers produced at the subject firm, and, as such, the subject workers cannot be adversely impacted by the increased imports by the subject firm. Further, based on the results of the customer survey conducted by the Department during the remand investigation, SAR 37–40, 51–53, the Department determined that the subject workers cannot be adversely impacted by increased imports by the subject firm's declining customer.

In the remand determination, the Department affirmed that the shift of semiconductor wafer production to Taiwan cannot be a basis for TAA certification for the subject worker group.

The Department also stated in the remand determination that because the subject workers are not certified eligible to apply for TAA, they cannot be certified eligible to apply for ATAA.

During the remand investigation, the Department searched the TAA database for certifications during the relevant time period of worker groups producing semiconductor wafers that were based on increased imports, and found only one case (Texas Instruments Inc., KFAB

Manufacturing Division, Dallas, Texas; TA–W–62,197; issued November 8, 2007). Because only one case was found, the Department did not consider the certification to be relevant to the case at hand, much less indicative of likely increased aggregate imports of semiconductor wafers.

After the Department issued the negative determination on remand on June 6, 2008, however, the Department received information during the investigation of another matter remanded to the Department for further investigation, *Former Employees of Fairchild Semiconductor Corporation* v. *United States Secretary of Labor*, Court No. 06–00215 (*FEO Fairchild*) that caused the Department to reconsider the case at hand.

During the remand investigation of *FEO Fairchild*, the Department received information that Fairchild would begin importing semiconductor wafers in 2008. Upon receiving this information, the Department reviewed previously-submitted information in other cases to determine whether there were any indications that other domestic producers of semiconductor wafers did or would be importing semiconductor wafers in the time period consisting of May 2007 through the present.

The information that was the basis for the certification of Fairchild Semiconductor International, Mountain Top, Pennsylvania (TA–W–58,624; Notice of Revised Determination on Remand issued on July 22, 2008) combined with the information obtained from a careful review of previously-certified cases indicates the likelihood that there would be increased imports of semiconductor wafers in the time period after production shifted from Intel Corporation, Fab 23, Colorado Springs, Colorado to a foreign country.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained subsequent to the issuance of the negative remand determination, I determine that there was a total separation of a significant number or proportion of workers at the subject facility, and that there was a shift in production to a foreign country followed by likely increased imports of articles like or directly competitive with semiconductor wafers produced at the subject facility. In accordance with the provisions of the Act, I make the following certification:

> ''All workers of Intel Corporation, Fab 23, Colorado Springs, Colorado, who became totally or partially separated from employment on or after May 30, 2006, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 25th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–17883 Filed 8–4–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION (NSF)

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Tuesday, August 12, 2008, at 8 a.m.; and Wednesday, August 13, 2008 at 8 a.m.

PLACE: National Science Foundation 4201 Wilson Blvd. Room 1235 Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

STATUS: Some portions open, some portions closed.

Open Sessions

August 12, 2008

8 a.m.–8:05 a.m.
8:05 a.m.–12 p.m.
1 p.m.–1:45 p.m.
1:45 a.m.–2:45 p.m.

August 13, 2008

8 a.m.–10:30 a.m.
10:30 a.m.–10:45 a.m.
10:45 a.m.–11 a.m.
11 a.m.–12 p.m.
2:30 p.m.–3:30 p.m.

Closed Sessions

August 12, 2008

2:45 p.m.–3 p.m.
3 p.m.–5:45 p.m.

August 13, 2008

12 p.m.–12:30 p.m.
1:30 p.m.–2 p.m.
2 p.m.–2:30 p.m.

Agency Contact: Dr. Robert E. Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/.*

Matters To Be Discussed

Tuesday, August 12, 2008

Open Session: 8 a.m.–8:05 a.m.
Chairman's Introduction

Committee on Programs and Plans (CPP)

Open Session: 8:05 a.m.–12 p.m.

- Approval of May 6, 2008 CPP Minutes
- Committee Chairman's Remarks
- CPP Subcommittee on Polar Issues (SOPI)
  - Approval of May 6, 2008 SOPI Minutes
  - SOPI Chairman's Remarks
  - Director's Report—Office of Polar Programs
- Update on U.S. Antarctic Program Process for Request for Proposals for Support Contractor
- The ''I'' in International Polar Year (IPY)
  - Fuel Costs, IPY, and USAP Infrastructure & Logistics
- Task Force on Sustainable Energy (SE)
  - Approval of May 6, 2008 SE Minutes
  - SE Co-Chairmen's Remarks
  - Discussion and Summary of June 19, 2008 Roundtable Discussion
  - Discussion of September 4, 2008 Roundtable Discussion
- NSB Action: Report to Congress on Interdisciplinary Research
- NSB Information Item: Competition for the Award of a Cooperative Agreement for the Management and Operation of the National Astronomy and Ionosphere Center (NAIC)
- Discussion Item: Major Research Facilities and Facility Plan
- Discussion Item: Review of MREFC Process
- NSB Item: Examination of Priority Order of MREFC New Starts
- Science Presentation: Dr. Richard Buckius, Assistant Director, ENG, *Our World Is Engineered*

Plenary Open

Open Session: 1 p.m.–1:45 p.m.

- Presentation by Norman Augustine

Committee on Strategy and Budget (CSB)

Open Session: 1:45 p.m.–2:45 p.m.
- Approval of CSB Minutes, May 6, 2008
- Committee Chairman's Remarks
- CSB Task Force on Cost Sharing (CS)
  - Approval of CS Minutes, May 6, 2008
  - Task Force Chairman's Remarks
  - Discussion of July 9 & 10, 2008 Roundtable Discussions on Cost Sharing
  - Update on Other Information—Gathering Activities
  - Discussion of Draft CS Report Outline
- Draft Board Report ''Report to Congress on Limits on Proposal Submissions by Institution''

Committee on Strategy and Budget (CSB)

Closed Session: 2:45 p.m.–3 p.m.
- NSF Budget Development

Committee on Programs and Plans (CPP)

Closed Session: 3 p.m.–5:45 p.m.
- NSB Information Item: High Performance Computing (HPC) Awards
- NSB Action Item: Protein Data Bank Management
- NSB Action Item: General Social Survey
- Overview of Science of Learning Centers Actions
- NSB Action Item: Science of Learning Center Proposal #1
- NSB Action Item: Science of Learning Center Proposal #2
- NSB Action Item: Science of Learning Center Proposal #3

Wednesday, August 13, 2008

Committee on Education and Human Resources (EHR)

Open Session: 8 a.m.–10:30 a.m.
- Approval of May 7, 2008 Minutes
- Committee Chairman's Remarks
- Subcommittee on Science and Engineering Indicators (SEI)
  - Approval of May 6, 2008 SEI Minutes
  - SEI Chairman's Remarks
  - Presentation of Director's Award for Collaborative Integration
  - Overview of the process for producing *Science and Engineering Indicators 2010* and the Subcommittee's role
  - Key Board dates and activities for production of *Science and Engineering Indicators 2010*
  - Introduction of chapter authors and discussion of *Science and Engineering Indicators 2010* narrative chapter outlines
  - SEI Chairman's summary
- Discussion: Preparing the Next Generation of STEM Innovators

Task Force on the NSB 60th Anniversary

Open Session: 10:30 a.m.–10:45 a.m.
- Task Force Chairman's Remarks
- Discussion on 60th Anniversary Commemoration

Executive Committee

Open Session: 10:45 a.m.–11 a.m.
- Approval of Minutes for the May 2008 Meeting
- Executive Committee Chairman's Remarks
- Updates or New Business from Committee Members

Committee on Audit and Oversight (A&O)

Open Session: 11 a.m.–12 p.m.
- Approval of Minutes of the May 7, 2008 Meeting
- Committee Chairman's Opening Remarks
- Report by NSF Advisory Committee on GPRA Performance Assessment (Dr. David Spencer)
- Findings from Labor Effort Audit Reports
- Enhancing the Accountability of International Collaborative Research Projects

Closed Session: 12 p.m.–12:30 p.m.
- Pending Investigations

Plenary Executive Closed

Closed Session: 1:30 p.m.–2 p.m.
- Approval of May 2008 Minutes
- Election for Executive Committee

Plenary Closed

Closed Session: 2 p.m.–2:30 p.m.
- Approval of May 2008 Minutes
- Awards and Agreements
- Closed Committee Reports

Plenary Open

Open Session: 2:30 p.m.–3:30 p.m.
- Approval of May 2008 Minutes
- Resolution to Close September 2008 Meeting
- Chairman's Report
- Director's Report
- Open Committee Reports

Ann Ferrante,

Writer/Editor.

[FR Doc. E8–18024 Filed 8–4–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information or Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information or Safeguards Information

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 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 notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

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.

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, Rulemaking, Directives and Editing 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 6D44, 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, any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Such requests for a hearing and petitions to intervene must be written requests filed via electronic submission through the NRC E-Filing system. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html*. 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.html*. 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, 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 hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a

component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time, on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment 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.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 email to *PDR.Resource@nrc.gov*.

FPL Energy, Point Beach, LLC, Docket No. 50–266 , Point Beach Nuclear Plant, Unit 1, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of amendment request: May 28, 2008.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment proposes a one cycle revision to the Point Beach Nuclear Plant (PBNP) Unit 1 technical specifications (TS). Specifically, TS 5.5.8, ''Steam Generator (SG) Program,'' and TS 5.6.8, ''Steam Generator Tube Inspection Report,'' will be revised to incorporate an interim alternate repair criterion into the provisions for SG tube repair for use during the Unit 1 2008 fall refueling outage and the subsequent operating cycle.

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.

Of the various accidents previously evaluated, the proposed changes only affect steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB), locked rotor, and control rod ejection accident evaluations.

Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model F steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from [primary water stress cracking corrosion] PWSCC below 17 inches from the [top of the tubesheet] TTS is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes is maintained by limiting the allowable ligament size for a circumferential crack to remain in service to 203 degrees below 17 inches from the TTS for the subsequent operating cycle. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the allowable crack size to 203 degrees subsequent operating cycle. These allowable crack sizes take into account

eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees for the 18-month SG tubing eddy current inspection interval meets the performance criteria of NEI 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and Draft Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [pressurized water reactors] Steam Generator Tubes.'' Therefore, the margin against tube burst pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain within the accident analysis assumptions for all axial or circumferentially oriented cracks occurring 17 inches below the top of the tubesheet. Since normal operating leakage is limited to 150 [gallons per day] gpd (approximately 0.10 [gallons per minute] gpm), the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet would be bounded by 500 gpd (approximately 0.35 gpm). This value is within the accident analysis assumptions for the design basis accident for PBNP.

Based on the above, the performance criteria of NEI–97–06, Rev. 2 and Draft Regulatory Guide (RG) 1.121 continue to be met and 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 accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the interim alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Revision 2 and RG I.I21 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting [general design criteria] GDC 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. PBNP GDC 9, 33, 31, 34, and 36 are similar to Appendix A GDC 14, 15, 31, and 32. RG 1. 12 1 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME [American Society of Mechanical Engineers] Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking in a tube or the tube-to-tubesheet weld, References 2 and 4 [of the application] define a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Additionally, it is shown that application of the limited tubesheet inspection depth criteria will not result in unacceptable primary-to-secondary leakage during all plant conditions.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or Bases of the plant Technical Specifications.

Attorney for licensee: Antonio Fernandez, Esquire, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois James.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

FPL Energy, Point Beach, LLC, Docket No. 50–266, Point Beach Nuclear Plant, Unit 1, Town of Two Creeks, Manitowoc County, Wisconsin

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCMailCenter.Resource@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a.);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320. The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: [2] Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check.

Note: Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (i.e., indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding [3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 28th day of July, 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[6] As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454 and 50–455]

Byron Station, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66 issued to Exelon Generation Company, LLC (the licensee) for operation of the Byron Station, Unit Nos. 1 and 2 (Byron), which is located in Ogle County, Illinois.

The proposed amendment in the licensee's application dated June 17, 2008, would revise Technical Specification (TS) 5.5.9, Steam Generator (SG) Program, and TS 5.6.9, Steam Generator Tube Inspection Report. For TS 5.5.9, the amendment would incorporate a one-cycle interim alternate repair criteria (IARC) in the provisions for SG tube repair criteria during Byron, Unit No. 2, refueling outage 14 and the subsequent operating cycle. The IARC proposal requires full-length inspection of the SG tubes within the tubesheet but does not require plugging tubes if circumferential cracking observed in the region greater than 17 inches from the top of the tubesheet is less than a value sufficient to permit the remaining circumferential ligament to transmit the limiting axial loads. For TS 5.6.9, the amendment would revise the current reporting requirements. The proposed changes only affect Byron, Unit No. 2; however, they are docketed for both Byron units because the TS are common to both units.

This amendment application includes sensitive unclassified non-safeguards information (SUNSI, i.e., proprietary information). Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. 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.

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR), postulated steam line break (SLB), locked rotor and control rod ejection accident evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model D5 steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below 17 inches from the top of the tubesheet is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes is maintained by limiting the allowable ligament size for a circumferential crack to remain in service to 203 degrees below 17 inches from the top of the tubesheet. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the allowable crack size to 203 degrees, which takes into account eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees meets the performance criteria of NEI 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and the Draft Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice.

The leak rate during postulated accident conditions has been shown to remain within the accident analysis assumptions for all axial or circumferentially oriented cracks occurring 17 inches below the top of the tubesheet. Since normal operating leakage is limited to 0.10 gallons per minute (gpm) (or 150 gallons per day (gpd)), the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet would be bounded by 0.5 gpm. This value is within the accident analysis assumptions for the limiting design basis accident for Byron 2, which is the postulated SLB event.

Based on the above, the performance criteria of NEI–97–06, Rev. 2 and RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of the applicable accidents previously evaluated (i.e., SLB, the locked rotor and control rod ejection accidents).

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the interim alternate repair criterion. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Rev. 2 and RG 1.121 are used as the basis in the development of the interim alternate repair criteria (IARC) methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For

circumferentially oriented cracking in a tube or the tube-to-tubesheet weld, the Westinghouse analysis, provided in report ''LTR–CDME–08–11 P–Attachment, Revision 3,'' supplemented by LTR–CDME–08–43 P–Attachment, Revision 3, defines a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Additionally, it is shown that application of the IARC will not result in unacceptable primary-to-secondary leakage during all plant conditions, including transients and postulated accident conditions.

Based on the above, it is concluded that the proposed changes do not result in any 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** (FR) 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, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system 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 person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, 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 by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be issued in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

In accordance with 10 CFR 2.309, each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule,

which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HearingDocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m., Eastern Time, on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated June 17, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation Exelon Generation Company, LLC Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois [Docket Nos. 50–454 and 50–455]

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and safeguards information (SGI)).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings,

Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action identified in (a) if the licensing action is not sustained;

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. **Note:** Copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's

diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 30th day of July 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI, or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.

interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[6] As of October 15, 2007, the NRC's final "E–Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

Day	Event/activity
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–373 and 50–374]

Exelon Generation Company, LLC, Lasalle County Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18, issued to Exelon Generation Company, LLC, for operation of the LaSalle County Station (LSCS), Units 1 and 2, located in LaSalle County, Illinois.

This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the licensing basis to allow ganged rod drive capability of the Rod Control Management System (RCMS). The amendment would revise the current licensing basis for Section 15 of the LSCS updated final safety analysis report (UFSAR) to incorporate the description of a new, potential accident into the LSCS UFSAR. The proposed new section of the UFSAR, (i.e., Section 15.4.1.3, ''Multiple Rod Withdrawal Error on Startup'') addresses the potential for a new accident similar to the event described in the current LSCS UFSAR Section 15.4.1.2, ''Continuous Rod Withdrawal During Startup.'' The potential new accident involves multiple rods being withdrawn in error, vice only one rod.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system 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 Title 10 of the Code of Federal Regulations (10 CFR), Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available 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. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS') Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor 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 that may be issued in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

In accordance with 10 CFR 2.309, each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner 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.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HearingDocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated August 14, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation; Lasalle County Station, Units 1 and 2; Docket No 50–373, 50–374; LaSalle County, Illinois

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and safeguards information (SGI)).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late

filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *220GCmail@nrc.gov*, respectively. The request must include the following information: [1]

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action identified in (a) if the licensing action is not sustained;

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320. The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: [2] Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. **Note:** Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (i.e., indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding [3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's *''E-Filing Rule''*, the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 30th day of July 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check. Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-Disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[6] As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

Day	Event/activity
1A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8–17903 Filed 8–4–08; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Electric Power Research Institute Course on Fire Probabilistic Risk Assessment (PRA)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research (RES), in cooperation with the Electric Power Research Institute (EPRI), will hold a joint course on fire probabilistic risk assessment (PRA). Since 2002, RES and EPRI, under a Memorandum of Understanding (MOU) on Cooperative Nuclear Safety Research, have been developing state-of-the-art methods for conduct of fire PRA. In September 2005, this work produced the ''EPRI/NRC–RES Fire PRA Methodology for Nuclear Power Facilities,'' NUREG/CR–6850 (EPRI 1011989). The course covers this state-of-the-art methodology.

Purpose: To provide training for users of ''EPRI/NRC–RES Fire PRA Methodology for Nuclear Power Facilities,'' NUREG/CR–6850 (EPRI 1011989).

DATES:

Session I: Monday, September 29 (8 a.m.–5 p.m.) through Thursday, October 2, 2008 (8 a.m.–4 p.m).

Session II: Monday, November 17 (8 a.m.–5 p.m.) through Thursday, November 20, 2008 (8 a.m.–4 p.m.).

ADDRESSES: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Meeting Agenda: The agenda for this meeting can be accessed at *http://www.nrc.gov/public-involve/conference-symposia/epri-fire-pra-course/epri-fire-pra-agenda.pdf*.

FOR FURTHER INFORMATION CONTACT: Kendra Hill, e-mail address: *Kendra.hill@nrc.gov* telephone number: (301) 415–5456. To register for the course log on to *http://www.nrc.gov/public-involve/conference-symposia/epri-fire-pra-course/epri-fire-pra-course-info.html*.

Conduct of the Meeting

This meeting is a Category 3 meeting*. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting. Please note this workshop is being conducted in a classroom format; registration is required to ensure space availability.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this workshop, or need the workshop notice or agenda in another format (e.g., Braille, large print), please notify the NRC's meeting contact. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

*Meetings between the NRC technical staff and external stakeholders are open for interested members of the public, petitioners, interveners, or other parties to attend as observers pursuant to Commission policy statement, ''Enhancing Public Participation in NRC Meetings,'' 67 **Federal Register** 36920, May 28, 2002.

Dated at Rockville, Maryland, this 17 day of July, 2008.

For the Nuclear Regulatory Commission.

Mark Salley,

Branch Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E8–17908 Filed 8–4–08; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on timely electronic filing, at least five days prior to the filing deadline, the petitioner/

requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this license application follows.

NRC EXPORT LICENSE APPLICATION —DESCRIPTION OF MATERIAL

Name of applicant; date of application; date received; application No.; docket No.	Material type	Total quantity	End use	Recipient country
Duratek Services, Inc. (a subsidiary of EnergySolutions); July 2, 2008; July 8, 2008; XW014; 11005756.	Class A radioactive waste in the form of contaminated dry active materials generated during refurbishment of a nuclear reactor pump and pump impeller from Ontario Power Generation's Pickering Station.	Approximately 170 pounds (24 cubic feet) of dry active materials.	Storage or disposal by the original generator, as required or authorized by their regulator.	Canada.

Dated this 24th day of July 2008 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. E8–17900 Filed 8–4–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58259; File No. PCAOB–2008–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Auditing Standard No. 6, Evaluating Consistency of Financial Statements and Conforming Amendments

July 30, 2008.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on February 1, 2008, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On January 29, 2008, the Board adopted Auditing Standard No. 6, *Evaluating Consistency of Financial Statements*, and amendments to the Board's interim auditing standards (''the proposed rules''). The proposed rules text is set out below.

Auditing Standard No. 6

Supersedes AU Secs. 420 and 9420

Evaluating Consistency of Financial Statements

Consistency and the Auditor's Report on Financial Statements

1. This standard establishes requirements and provides direction for the auditor's evaluation of the consistency of the financial statements, including changes to previously issued financial statements, and the effect of that evaluation on the auditor's report on the financial statements.

2. To identify consistency matters that might affect the report, the auditor should evaluate whether the comparability of the financial statements between periods has been materially affected by changes in accounting principles or by material adjustments to previously issued financial statements for the relevant periods.

3. The periods covered in the auditor's evaluation of consistency depend on the periods covered by the auditor's report on the financial statements. When the auditor reports only on the current period, he or she should evaluate whether the current-period financial statements are consistent with those of the preceding period. When the auditor reports on two or more periods, he or she should evaluate consistency between such periods and the consistency of such periods with the period prior thereto if such prior period is presented with the financial statements being reported upon.[1] The auditor also should evaluate whether the financial statements for periods described in this paragraph are consistent with previously issued financial statements for the respective periods.[2]

Note: The term ''current period'' means the most recent year, or period of less than one year, upon which the auditor is reporting.

4. The auditor should recognize the following matters relating to the consistency of the company's financial statements in the auditor's report if those matters have a material effect on the financial statements:

a. A change in accounting principle

b. An adjustment to correct a misstatement in previously issued financial statements.[3]

Change in Accounting Principle

5. A change in accounting principle is a change from one generally accepted accounting principle to another generally accepted accounting principle when (1) there are two or more generally

[1] For example, assume that a company presents comparative financial statements covering three years and has a change in auditors. In the first year in which the successor auditor reports, the successor auditor evaluates consistency between the year on which he or she reports and the immediately preceding year. In the second year in which the successor auditor reports, the successor auditor would evaluate consistency between the two years on which he or she reports and between those years and the earliest year presented.

[2] When a company uses retrospective application, as defined in Statement of Financial Accounting Standards No. 154, *Accounting Changes and Error Corrections* (''SFAS No. 154''), to account for a change in accounting principle, the financial statements presented generally will be consistent. However, the previous years' financial statements presented with the current year's financial statements will reflect the change in accounting principle and, therefore, will appear different from those previous years' financial statements on which the auditor previously reported. This standard clarifies that the auditor's evaluation of consistency should encompass previously issued financial statements for the relevant periods.

[3] The term ''error,'' as used in SFAS No. 154, is equivalent to ''misstatement,'' as used in the auditing standards.

accepted accounting principles that apply, or when (2) the accounting principle formerly used is no longer generally accepted. A change in the method of applying an accounting principle also is considered a change in accounting principle.[4]

Note: A change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of a misstatement.

6. The auditor should evaluate and report on a change in accounting estimate effected by a change in accounting principle like other changes in accounting principle.[5] In addition, the auditor should recognize a change in the reporting entity[6] by including an explanatory paragraph in the auditor's report, unless the change in reporting entity results from a transaction or event. A change in reporting entity that results from a transaction or event, such as the creation, cessation, or complete or partial purchase or disposition of a subsidiary or other business unit does not require recognition in the auditor's report.

7. The auditor should evaluate a change in accounting principle to determine whether—

a. The newly adopted accounting principle is a generally accepted accounting principle,

b. The method of accounting for the effect of the change is in conformity with generally accepted accounting principles,

c. The disclosures related to the accounting change are adequate,[7] and

d. The company has justified that the alternative accounting principle is preferable.[8]

8. A change in accounting principle that has a material effect on the financial statements should be recognized in the auditor's report on the audited financial statements. If the auditor concludes that the criteria in paragraph 7 have been met, the auditor should add an explanatory paragraph to the auditor's report, as described in AU sec. 508, *Reports on Audited Financial Statements*. If those criteria are not met, the auditor should treat this accounting change as a departure from generally accepted accounting principles and address the matter as described in AU sec. 508.

Note: If a company's financial statements contain an investment accounted for by the equity method, the auditor's evaluation of consistency should include consideration of the investee. If the investee makes a change in accounting principle that is material to the investing company's financial statements, the auditor should add an explanatory paragraph (following the opinion paragraph) to the auditor's report, as described in AU section 508.

Correction of a Material Misstatement in Previously Issued Financial Statements

9. The correction of a material misstatement in previously issued financial statements should be recognized in the auditor's report on the audited financial statements through the addition of an explanatory paragraph, as described in AU sec. 508.

10. The accounting pronouncements generally require certain disclosures relating to restatements to correct misstatements in previously issued financial statements. If the financial statement disclosures are not adequate, the auditor should address the inadequacy of disclosure as described in AU sec. 431, *Adequacy of Disclosure in Financial Statements*, and AU sec. 508.

Change in Classification

11. Changes in classification in previously issued financial statements do not require recognition in the auditor's report, unless the change represents the correction of a material misstatement or a change in accounting principle. Accordingly, the auditor should evaluate a material change in financial statement classification and the related disclosure to determine whether such a change also is a change in accounting principle or a correction of a material misstatement. For example, certain reclassifications in previously issued financial statements, such as reclassifications of debt from long-term to short-term or reclassifications of cash flows from the operating activities category to the financing activities category, might occur because those items were incorrectly classified in the previously issued financial statements. In such situations, the reclassification also is the correction of a misstatement. If the auditor determines that the reclassification is a change in accounting principle, he or she should address the matter as described in paragraphs 7 and 8 and AU sec. 508. If the auditor determines that the reclassification is a correction of a material misstatement in previously issued financial statements, he or she should address the matter as described in paragraphs 9 and 10 and AU sec. 508.

Amendments to PCAOB Auditing Standards

Auditing Standards

AU Sec. 328, ''Auditing Fair Value Measurements and Disclosures''

Statement on Auditing Standards (''SAS'') No. 101, ''Auditing Fair Value Measurements and Disclosures,'' (AU sec. 328, ''Auditing Fair Value Measurements and Disclosures''), as amended, is amended as follows:

a. The text of footnote 4 to paragraph .19 is replaced with the following: Statement of Financial Accounting Standard No. 157, *Fair Value Measurements*, states that a change in valuation technique or its application is appropriate if the change results in a measurement that is equally or more representative of fair value in the circumstances.

AU Sec. 410, ''Adherence to Generally Accepted Accounting Principles''

SAS No. 1, ''Codification of Auditing Standards and Procedures,'' section 410 (AU sec. 410, ''Adherence to Generally Accepted Accounting Principles''), as amended, is amended as follows:

a. Paragraph .02 is replaced with following paragraph, and the reference to footnote 1 is moved to the end of the new paragraph .02.

The fourth standard of reporting is:

The report shall either contain an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.

AU Sec. 411, ''The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles''

SAS No. 69, ''The Meaning of *Present Fairly in Conformity With Generally Accepted Accounting Principles*'' (AU

[4] *See* SFAS No. 154, paragraph 2c.

[5] SFAS No. 154, paragraph 2e, defines a ''change in accounting estimate effected by a change in accounting principle'' as ''a change in accounting estimate that is inseparable from the effect of a related change in accounting principle.''

[6] ''Change in reporting entity'' is a change that results in financial statements that, in effect, are those of a different reporting entity. *See* SFAS No. 154, paragraph 2f.

[7] Newly issued accounting pronouncements usually set forth the method of accounting for the effects of a change in accounting principle and the related disclosures. SFAS No. 154 sets forth the method of accounting for the change and the related disclosures when there are no specific requirements in the new accounting pronouncement.

[8] The issuance of an accounting pronouncement that requires use of a new accounting principle, interprets an existing principle, expresses a preference for an accounting principle, or rejects a specific principle is sufficient justification for a change in accounting principle, as long as the change in accounting principle is made in accordance with the hierarchy of generally accepted accounting principles. *See* SFAS No. 154, paragraph 14.

sec. 411, ''The Meaning of *Present Fairly in Conformity With Generally Accepted Accounting Principles*''), as amended, is amended as follows:

a. The third sentence of paragraph .01 is replaced with the following:

The purpose of this section is to explain the meaning of ''present fairly'' as used in the phrase ''present fairly * * * in conformity with generally accepted accounting principles.'' In applying this section, the auditor should look to the requirements of the Securities and Exchange Commission for the company under audit with respect to the accounting principles applicable to that company.

b. Paragraphs .02, .05, .07, and .09–.18 are deleted.

AU Sec. 9411, ''The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles, Auditing Interpretations of Section 411''

Auditing Interpretation No. 3, ''The Auditor's Consideration of Management's Adoption of Accounting Principles for New Transactions or Events'' of the auditing interpretations of AU sec. 411 (AU sec. 9411.11–.15) is deleted.

AU Sec. 420, ''Consistency of Application of Generally Accepted Accounting Principles,'' and AU Sec. 9420, ''Consistency of Application of Generally Accepted Accounting Principles, Auditing Interpretations of Section 420''

SAS No. 1, ''Codification of Auditing Standards and Procedures,'' section 420 (AU sec. 420, ''Consistency of Application of Generally Accepted Accounting Principles''), as amended, and the related auditing interpretations (AU sec. 9420) are superseded by PCAOB Auditing Standard No. 6, *Evaluating Consistency of Financial Statements*.

AU Sec. 431, ''Adequacy of Disclosure in Financial Statements''

SAS No. 32, ''Adequacy of Disclosure in Financial Statements'' (AU sec. 431, ''Adequacy of Disclosure in Financial Statements'') is amended as follows:

a. Footnote 1 is deleted.

b. Paragraph .04 is deleted.

AU Sec. 508, ''Reports on Audited Financial Statements''

SAS No. 58, ''Reports on Audited Financial Statements'' (AU sec. 508, ''Reports on Audited Financial Statements''), as amended, is amended as follows:

a. In Paragraph .03, footnote 2 is deleted.

b. In Paragraph .11, item .11b is deleted; item .11c is reordered as .11b; .11d is reordered as .11c; the paragraph references in .11c (formerly .11d) to paragraphs .16 through .18 are replaced with paragraph references .17A through .17E; and a new item .11d is added as follows:

''A material misstatement in previously issued financial statements has been corrected (paragraphs .18A through .18C).''

c. Paragraphs .14–.15 are deleted, along with the preceding heading ''Departure From a Promulgated Accounting Principle,'' and the note following the paragraph.

d. The text of paragraph .16 is replaced with the following:

The auditor should recognize the following matters relating to the consistency of the company's financial statements in the auditor's report if those matters have a material effect on the financial statements:

a. A change in accounting principle

b. An adjustment to correct a misstatement in previously issued financial statements

e. Paragraphs .17–.18 and related footnotes 12 and 13 are replaced with the following:

Change in Accounting Principle

.17A As discussed in PCAOB Auditing Standard No. 6, *Evaluating Consistency of Financial Statements*, the auditor should evaluate a change in accounting principle to determine whether (1) the newly adopted accounting principle is a generally accepted accounting principle, (2) the method of accounting for the effect of the change is in conformity with generally accepted accounting principles, (3) the disclosures related to the accounting change are adequate, and (4) the company has justified that the alternative accounting principle is preferable.[12] A change in accounting principle that has a material effect on the financial statements should be recognized in the auditor's report on the audited financial statements through the addition of an explanatory paragraph following the opinion paragraph. If the auditor concludes that the criteria in this paragraph have been met, the explanatory paragraph in the auditor's report should include identification of the nature of the change and a reference to the note disclosure describing the change.

[12] The issuance of an accounting pronouncement that requires use of a new accounting principle, interprets an existing principle, expresses a preference for an accounting principle, or rejects a specific principle is sufficient justification for a change in accounting principle, as long as the change in accounting principle is made in accordance with the hierarchy of generally accepted accounting principles. *See* FASB Statement 154, paragraph 14.

.17B Following is an example of an explanatory paragraph for a change in accounting principle resulting from the adoption of a new accounting pronouncement:

As discussed in Note X to the financial statements, the company has changed its method of accounting for [*describe accounting method change*] in [*year(s) of financial statements that reflect the accounting method change*] due to the adoption of [*name of accounting pronouncement*].

.17C Following is an example of an explanatory paragraph when the company has made a change in accounting principle other than a change due to the adoption of a new accounting pronouncement.

As discussed in Note X to the financial statements, the company has elected to change its method of accounting for [*describe accounting method change*] in [*year(s) of financial statements that reflect the accounting method change*].

.17D The explanatory paragraph relating to a change in accounting principle should be included in reports on financial statements in the year of the change and in subsequent years until the new accounting principle is applied in all periods presented. If the accounting change is accounted for by retrospective application to the financial statements of all prior periods presented, the additional paragraph is needed only in the year of the change.

.17E If the auditor concludes that the criteria in paragraph .17A for a change in accounting principle are not met, the auditor should consider the matter to be a departure from generally accepted accounting principles and, if the effect of the change in accounting principle is material, issue a qualified or adverse opinion.

Correction of a Material Misstatement in Previously Issued Financial Statements

.18A Correction of a material misstatement in previously issued financial statements should be recognized in the auditor's report through the addition of an explanatory paragraph following the opinion paragraph.[13] The explanatory paragraph should include (1) a statement that the previously issued financial statements have been restated for the correction of a misstatement in the respective period and (2) a reference to the company's disclosure of the correction of the misstatement. Following is an example of an appropriate explanatory paragraph when there has been a correction of a

material misstatement in previously issued financial statements.

As discussed in Note X to the financial statements, the 20X2 financial statements have been restated to correct a misstatement.

[13] The directions in paragraphs .68–.69 apply when comparative financial statements are presented and the opinion on the prior-period financial statements differs from the opinion previously expressed.

.18B This type of explanatory paragraph in the auditor's report should be included in reports on financial statements when the related financial statements are restated to correct the prior material misstatement. The paragraph need not be repeated in subsequent years.

.18C The accounting pronouncements generally require certain disclosures relating to restatements to correct a misstatement in previously issued financial statements. If the financial statement disclosures are not adequate, the auditor should address the lack of disclosure as discussed beginning at paragraph .41 and in AU sec. 431.

f. Paragraph .50 is deleted.

g. The text of paragraph .51 is replaced with the following:

Departures from generally accepted accounting principles related to changes in accounting principle. Paragraph .17A states the criteria for evaluating a change in accounting principle. If the auditor concludes that the criteria have not been met, he or she should consider that circumstance to be a departure from generally accepted accounting principles and, if the effect of the accounting change is material, should issue a qualified or adverse opinion.

h. In paragraph .52:

• The first three sentences of the paragraph are replaced with the following:

The accounting standards indicate that a company may make a change in accounting principle only if it justifies that the allowable alternative accounting principle is preferable. If the company does not provide reasonable justification that the alternative accounting principle is preferable, the auditor should consider the accounting change to be a departure from generally accepted accounting principles and, if the effect of the change in accounting principle is material, should issue a qualified or adverse opinion. The following is an example of a report qualified because a company did not provide reasonable justification that an alternative accounting principle is preferable:

• In the second sentence of the first paragraph of the example report, the phrase ''for making this change'' is replaced with the phrase ''that this accounting principle is preferable.''

In the text of footnote 17, the first two sentences are deleted; the word, ''However'' is deleted at the beginning of the third sentence; the word ''because'' at the beginning of the third sentence is capitalized; the phrase ''the middle paragraph'' is replaced with ''this paragraph;'' and the references to paragraphs ''.16 through .18'' are replaced with references to paragraphs ''17A through 17E.''

i. The text of paragraph .57 is replaced with the following:

If the auditor issues a qualified or adverse opinion because the company has not justified that an allowable accounting principle adopted in an accounting change is preferable, as described in paragraph .52, the auditor should continue to express that opinion on the financial statements for the year of change as long as those financial statements are presented and reported on. However, the auditor's qualified or adverse opinion relates only to the accounting change and does not affect the status of a newly adopted principle as a generally accepted accounting principle.

Accordingly, while expressing a qualified or adverse opinion for the year of change, the independent auditor's opinion regarding the subsequent years' statements need not express a qualified or adverse opinion on the use of the newly adopted principle in subsequent periods.

j. In the text of footnote 19 to paragraph .59, ''(b)'' is added to the beginning of the list of subsections.

k. The first sentence of footnote 20 to paragraph .62 is deleted.

l. In the second sentence of footnote 25 to paragraph .67, replace the phrase ''section 420, *Consistency of Application of Generally Accepted Accounting Principles*,'' with the phrase ''PCAOB Auditing Standard No. 6, *Evaluating Consistency of Financial Statements*''.

m. In the second sentence of paragraph .69:

• Item (c) is inserted as follows:

(c) if applicable, a statement that the previously issued financial statements have been restated for the correction of a misstatement in the respective period,

• Item (c) is changed to (d)

• Item (e) is inserted as follows:

(e) if applicable, a reference to the company's disclosure of the correction of the misstatement,

• Item (d) is changed to (f) and the words ''the fact'' are inserted at the beginning of the item.

n. In the third sentence of paragraph .73, the word ''restated'' is replaced with the word ''adjusted.''

o. In paragraph .74:

• In the first sentence of the third text paragraph, the word ''restated'' is replaced with the word ''adjusted,'' and the word ''restatement'' is replaced with the words ''the adjustments.''

• In the second sentence of the third text paragraph, the word ''restatement'' is deleted, and the word ''his'' is replaced with the words ''the auditor's.''

AU sec. 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report

SAS No. 1, ''Codification of Auditing Standards and Procedures,'' section 561, ''Subsequent Discovery of Facts Existing at the Date of Report,'' as amended, is amended as follows:

a. The text of footnote 3 to paragraph .06 is replaced with the following: *See* paragraphs 26 and 27 of Accounting Principles Board Opinion No. 9 and paragraphs 25 and 26 of FASB Statement No. 154, regarding disclosure of adjustments applicable to prior periods.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Section 103(a) of the Act directs the Board, by rule, to establish, among other things, ''auditing and related attestation standards * * * to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' The Board proposed certain changes to its auditing standards in response to two actions of the Financial Accounting Standards Board (''FASB'').

First, in May 2005, the FASB issued Statement of Financial Accounting Standards (''SFAS'') No. 154, *Accounting Changes and Error*

Corrections,[9] which superseded Accounting Principles Board (''APB'') Opinion No. 20, *Accounting Changes.*[10] SFAS No. 154 establishes, unless impracticable, retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to a newly adopted accounting principle. SFAS No. 154 also redefines the term ''restatement'' to refer only to ''the process of revising previously issued financial statements to reflect the correction of an error in those financial statements.'' [11] Under SFAS No. 154, therefore, the term ''restatement'' does not refer to changes made to previously issued financial statements to reflect a change in accounting principle.

AU sec. 420, *Consistency of Application of Generally Accepted Accounting Principles,* the Board's interim standard on the auditor's responsibilities for evaluating the consistency of the application of generally accepted accounting principles (''GAAP''), generally reflected the provisions of APB Opinion No. 20, which was superseded by SFAS No. 154. To better align the Board's standards with the new accounting standard, the Board adopted a new auditing standard on evaluating consistency, which will supersede AU sec. 420, and conforming amendments to AU sec. 508, *Reports on Audited Financial Statements,* of its interim auditing standards.

Second, the FASB has also issued an exposure draft of a proposed Statement of Financial Accounting Standards, *The Hierarchy of Generally Accepted Accounting Principles.*[12] The FASB's proposed standard would incorporate the hierarchy found in the auditing standards into the accounting standards. Historically, a description of the GAAP hierarchy has resided only in the auditing standards. Because the GAAP hierarchy identifies the sources of accounting principles and the framework for selecting principles to be used in preparing financial statements, the Board believed that these requirements are more appropriately located in the accounting standards. Accordingly, the Board adopted amendments to its auditing standards to remove the GAAP hierarchy.[13]

The proposed standard and amendments to the Board's interim standards are intended to update and clarify the auditing standards in light of SFAS No. 154 and the FASB's proposal on the GAAP hierarchy. In particular, these updates and clarifications should enhance the clarity of auditor reporting on accounting changes and corrections of misstatements by distinguishing between these events.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules would apply equally to all registered public accounting firms and their associated persons.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2007–003 (April 3, 2007). A copy of PCAOB Release No. 2007–003 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org.* The Board received 11 written comments. The Board has carefully considered all comments it has received. In response to the written comments received, the Board has clarified and modified certain aspects of the proposed rules, as discussed below.

Evaluating Consistency

Under Auditing Standard No. 6, auditors are required to evaluate the consistency of a company's financial statements and report on inconsistencies. The new standard updates these requirements and aligns them more closely with SFAS No. 154 [14] by requiring the auditor's report to recognize a company's correction of a material misstatement, regardless of whether it involves the application of an accounting principle. Based on a discussion at an October 2005 meeting of the Board's Standing Advisory Group, the Board understands that this requirement is consistent with current practice. The new standard focuses on the auditor's responsibilities regarding events that warrant recognition in the auditor's report on the financial statements—changes in accounting principles and corrections of misstatements in previously issued financial statements.[15] The standard also clarifies that the auditor's report should indicate whether an adjustment to prior-period financial statements results from a change in accounting principle or the correction of a misstatement.

Materiality

There were several comments on materiality. Some commenters suggested that the standard should specifically state that the auditor need not recognize the correction of a misstatement that is immaterial to the previously issued financial statements. Another suggested that the standard should remind the auditor that professional judgment is required to evaluate consistency. Another commenter said that additional guidance on materiality as applied to individual matters in the financial statements would be helpful in applying the standard. Others suggested that clarity would be improved by inserting the word ''material'' in several places.

In general, the Board's view is that the purpose of the standard is to provide direction on evaluating consistency; for example, the accounting periods the auditor should evaluate, the recognition in the auditor's report of consistency matters prescribed by the accounting standards, and the related audit reporting requirements. Because an audit is predicated on the use of reasoned judgment and the consideration of materiality in planning, performing, and reporting on the audit, the Board does not believe it is necessary for this standard to specifically direct the auditor to exercise judgment and apply materiality. Further, materiality is a concept that is defined under the federal

[9] Financial Accounting Standards Board (''FASB''), Statement of Financial Accounting Standards (''SFAS'') No. 154, *Accounting Changes and Error Corrections* (2005) (''SFAS No. 154'').

[10] Accounting Principles Board (''APB'') Opinion No. 20, *Accounting Changes* (1971). SFAS No. 154 also superseded SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements.*

[11] *See* SFAS No. 154, paragraph 2j.

[12] FASB, Proposed Statement of Financial Accounting Standards, *The Hierarchy of Generally Accepted Accounting Principles,* Exposure Draft (April 2005).

[13] If the amendments are approved by the SEC, the effective date for the removal of the GAAP hierarchy from the auditing standards will be 60 days after the standard and amendments are approved by the SEC. The Board has coordinated with the FASB and understands that the FASB intends to coincide the effective date of its standard on the GAAP hierarchy with that of the PCAOB.

[14] Because SFAS No. 154 provides comprehensive, authoritative accounting guidance on changes in accounting principle and corrections of errors, Auditing Standard No. 6 omits the accounting guidance that was included in AU sec. 420.

[15] AU sec. 420 also required recognition of those events. However, it only required recognition in the auditor's report of the correction of a misstatement involving an accounting principle. In addition, unlike AU sec. 420, the new standard does not describe the accounting changes that do not require recognition in the auditor's report.

securities laws, and it is not the objective of this standard to alter or interpret that concept.

The Board did agree that clarity could be improved in some areas by inserting the word ''material'' to modify the word ''misstatement.'' The Board added ''material'' to AU secs. 508.18A and B to be consistent with paragraph 4 of Auditing Standard No. 6. However, AU sec. 508.18C does not include ''material'' because that sentence summarizes the SFAS No. 154 requirement for correcting a misstatement, which does not directly mention materiality.

Periods Covered by the Evaluation of Consistency

The new standard describes the scope of the required evaluation of consistency in terms that are similar to the description in AU sec. 420. Under the new standard, when the auditor reports only on the current period, the auditor should evaluate whether the financial statements of the current period are consistent with those of the preceding period. When the auditor reports on two or more years, the auditor should evaluate whether the financial statements reported on are consistent with each other and with the prior year's financial statements, if presented. For example, assume that a company presents comparative financial statements covering three years and has a change in auditors. In the first year in which the successor auditor reports, the successor auditor evaluates consistency between the year on which he or she reports and the immediately preceding year. In the second year in which the successor auditor reports, the successor auditor would evaluate consistency between the two years on which he or she reports and between those years and the earliest year presented. In response to comments, the Board added this example to the final standard.

When a company uses retrospective application, as defined in SFAS No. 154, to account for a change in accounting principle, the financial statements presented generally will be consistent. However, the previous years' financial statements presented with the current year's financial statements will reflect the change in accounting principle and, therefore, will appear different from those previous years' financial statements on which the auditor previously reported. For example, consider a company that adopts a new accounting standard in 2007 that requires retrospective application to 2006 and 2005. The financial statements for 2006 and 2005 will be consistent, as presented with 2007. However, the financial statements for the years 2006 and 2005 that were issued a year earlier will not reflect the retrospective application and hence will not be consistent with 2007 and will be different from the 2006 and 2005 financial statements that are presented with 2007. The new standard clarifies that the auditor's evaluation of consistency should encompass previously issued financial statements for the relevant periods.

Paragraph 3 of the proposed standard described the financial statement periods covered by the evaluation of consistency. The third sentence of that paragraph was intended to be a clarification of the requirement in AU sec. 420.22 regarding the evaluation of two or more years. However, some commenters found the third sentence of paragraph 3 to be confusing and recommended retaining the language in AU sec. 420.22, unless the Board had intended to change the auditor's responsibilities for evaluating the consistency of GAAP. Because the Board wanted to be clear that the auditor's responsibilities had not changed, the Board decided to retain the original sentence from AU sec. 420.22, with some changes, instead of the proposed third sentence of paragraph 3. The inserted sentence, adapted from AU sec. 420.22, reads as follows (additions are in italics and deletions are in brackets):

> When the [independent] auditor reports on two or more *periods* [years], he *or she* should *evaluate* [address the] consistency [of the application of accounting principles] between such *periods* [years] and the consistency of such *periods* [years] with the *period* [year] prior thereto if such prior *period* [year] is presented with the financial statements being reported upon.

The Board did not include the reference to ''the application of accounting principles'' because paragraph 3 also relates to the auditor's evaluation of a company's correction of a material misstatement, regardless of whether it involves the application of an accounting principle. The Board also used the word ''evaluate'' because it describes the auditor's responsibilities consistently with the rest of the paragraph.

Two commenters suggested that the last sentence of proposed paragraph 3, which described the auditor's responsibility to evaluate whether the financial statements are consistent with previously issued financial statements for the same period, was confusing and unnecessary. These commenters suggested deleting the last sentence of paragraph 3. In addition, one commenter suggested that paragraph 3 of the proposed standard could be clarified by including the explanatory language from the proposing release regarding retrospective application under SFAS No. 154. As discussed above, the new standard is intended to clarify that the auditor's evaluation of consistency should include an evaluation of previously issued financial statements for the relevant periods. Accordingly, the Board believed that the final sentence of paragraph 3 is necessary. However, the Board agreed that including the suggested explanatory language from the proposing release regarding retrospective application would clarify the paragraph and has added that language as a footnote to paragraph 3.

Reference to Application of Accounting Principles

Consistent with the discussion above related to paragraph 3 of the proposed standard, the Board also removed the reference to ''application of accounting principles'' from the first paragraph of Auditing Standard No. 6. Because the auditor's evaluation of consistency under this standard includes errors not involving an accounting principle, the consistency evaluation is broader than that described under the second standard of reporting. Accordingly, the Board also removed the reference to the second standard of reporting from paragraph 2 of Auditing Standard No. 6.

Change in Accounting Principle

The new standard requires the auditor to evaluate a change in accounting principle [16] that has a material effect on the financial statements to determine whether: (1) The newly adopted accounting principle is a generally accepted accounting principle, (2) the method of accounting for the effect of the change is in conformity with GAAP, (3) the disclosures related to the accounting change are adequate, and (4) the company justifies that the alternative accounting principle is preferable,[17] as required by SFAS No. 154.[18] Under the amendments to AU

[16] The proposed and final standards use the definition of a change in accounting principle found in SFAS No. 154, paragraph 2c.

[17] In certain circumstances, SEC rules require issuers to file a letter from the auditor indicating whether or not a change is to an alternative accounting principle that is preferable. *See* Rule 10–01(b)(6) of Regulation S–X, 17 CFR 210.10–01(b)(6).

[18] Under SFAS No. 154, the issuance of an accounting pronouncement that requires use of a new accounting principle, interprets an existing principle, expresses a preference for an accounting principle, or rejects a specific principle is sufficient justification for a change in accounting principle as long as the change in accounting principle is made

sec. 508, if the four criteria are met,[19] the auditor would recognize the change in accounting principle in the auditor's report through the addition of an explanatory paragraph consisting of an identification of the nature of the change and a reference to the issuer's note disclosure describing the change. If those criteria are not met, the auditor would issue a qualified or adverse opinion.[20]

Some commenters recommended that the Board reconsider whether it was necessary for the auditor to recognize in the audit report changes that result when a company is required to adopt a newly issued accounting standard. They indicated that the significance of a company's discretionary change in accounting principle may be diluted if the auditor recognizes both discretionary changes and those changes in accounting principles required by a newly-issued standard in the report. Another commenter suggested that the auditor should not be required to include an explanatory paragraph in the audit report when changes in accounting principle have been applied retrospectively because, in such cases, the financial statements included in the filing will appear consistent. As noted above, the Board believes that it is important for investors to be informed when the prior year financial statements presented with the current year are different from previously issued financial statements. In addition, the Board believes that the different language in the auditor's report for discretionary changes and those required by a newly-issued standard provides sufficient notification to investors of the general nature of the change. Therefore, the Board adopted the requirement as proposed.[21]

One commenter suggested that the proposed standard deleted useful information about a change in accounting principle that also involves a change in an estimate. The proposed standard did not carry forward the requirement of AU sec. 420.13 that the auditor should recognize in his or her report a change in accounting principle that is inseparable from a change in estimate. After considering this comment, the Board concluded that the requirement in AU sec. 420.13 does result in useful information being included in the auditor's report. Accordingly, the Board updated the language in AU sec. 420 to reflect the term used in SFAS 154, and included the requirement in Auditing Standard No. 6.[22]

Some commenters asked the Board to clarify the reporting requirement related to a change in reporting entity. According to AU sec. 420.08, a change in reporting entity resulting from a transaction or event, such as the creation, cessation, or complete or partial purchase or disposition of a subsidiary or other business unit, does not require that the auditor include an explanatory paragraph in the auditor's report. Under the proposed standard, the auditor may have been required to report on, for example, the disposition of a subsidiary or business unit because SFAS No. 154 (and its predecessor, APB Opinion No. 20) did not specifically exempt such a transaction from the definition of a change in reporting entity. Generally, dispositions or spin-offs have specific disclosure requirements in the accounting standards and the Board did not intend to change practice and require the auditor to report on these events through an explanatory paragraph. Accordingly, the Board carried forward the requirement from AU sec. 420.08 regarding a transaction or event. In addition, the Board also added a reference to paragraph 2f in SFAS No. 154, which describes a change in reporting entity, as suggested by some commenters.

In response to comments, the Board also modified paragraph 8 of the proposed standard, which provided direction for reporting a change in accounting principle. Some commenters noted that the proposed conforming amendments to AU sec. 508.17 had a more clearly stated version of the number of years that the auditor is required to include an explanatory paragraph related to a change in principle than did footnote 5 to paragraph 8. After considering the commenters' recommendation that the language in the footnote be changed, the Board decided that the footnote was not necessary because paragraph 8 referred the auditor directly to the reporting requirements in AU sec. 508. The Board therefore removed footnote 5 from the final standard.

Correction of a Material Misstatement in Previously Issued Financial Statements

Under Auditing Standard No. 6, the correction of a material misstatement in previously issued financial statements (*i.e.*, a ''restatement'') is recognized in the auditor's report through the addition of an explanatory paragraph. Under the conforming amendments to AU sec. 508, the explanatory paragraph in the auditor's report regarding a restatement should include (1) a statement that the previously issued financial statements have been restated for the correction of a misstatement in the respective period and (2) a reference to the company's disclosure of the correction of the misstatement. The first statement in the explanatory paragraph distinguishes restatements from adjustments to prior-period financial statements resulting from changes in accounting principle. Previously, the auditor's responsibilities for reporting on most restatements were the same as for reporting on changes in accounting principle.

One commenter suggested that the proposed standard did not clearly explain whether corrections of an error not involving a principle would require recognition in the auditor's report. Unlike the previous requirement, the proposed standard did not distinguish between the ''correction of an error in principle'' and an ''error correction not involving a principle.''[23] Rather, the proposed standard required recognition in the auditor's report of any correction of a material misstatement, whether or not the error involved a principle. The Board reconsidered the language and concluded that the requirement as proposed was sufficiently clear. The new standard aligns the auditor's reporting responsibilities with the accounting standards, which require disclosure of all restatements, by requiring an explanatory paragraph when the company has restated the financial statements.

Some commenters suggested that it would not improve clarity to have the auditor's report include a statement that the financial statements were restated

in accordance with the GAAP hierarchy. *See* SFAS No. 154, paragraph 14.

[19] The auditor has substantially the same responsibility for evaluating a change in accounting principle as under AU sec. 431, *Adequacy of Disclosure in Financial Statements*, and paragraph .50 of AU sec. 508, *Reports on Audited Financial Statements*. The language in Auditing Standard No. 6 has, however, been updated to be consistent with SFAS No. 154.

[20] This responsibility is substantially unchanged from AU sec. 508.51.

[21] In addition, one commenter suggested that the standard include an example of a change in the method of applying an accounting principle. The final standard, like the proposed standard, notes that under SFAS No. 154 a change in the method of applying an accounting principle is also a change in accounting principle. While the Board believes that it is helpful for the standard to reference the accounting requirement, it also believes that it is not appropriate for the auditing standard to provide accounting guidance.

[22] The new standard uses the term ''change in accounting estimate effected by a change in accounting principle,'' which is defined in SFAS No. 154 as ''a change in accounting estimate that is inseparable from the effect of a related change in accounting principle.''

[23] This distinction previously was in paragraphs .12 and .16 of AU sec. 420, *Consistency of Application of Generally Accepted Accounting Principles*.

''to correct a material misstatement.'' They noted that SFAS No. 154 already defines a restatement as the revision of previously issued financial statements to reflect the correction of an error. The Board decided to retain the reporting requirement as proposed because it clearly distinguishes corrections of misstatements from changes in accounting principle. Also, the required reporting language regarding restatements is more informative because it does not rely entirely on the user's knowledge of the definition of ''restatement'' in the accounting standard.[24]

One commenter also recommended that the auditor's explanatory paragraph about the correction of a misstatement should contain additional information. The commenter recommended that the explanatory paragraph include a statement that (1) the previously issued auditor's report should not be relied on because the previously issued financial statements were materially misstated, and (2) the previously issued report is replaced by the auditor's report on the restated financial statements.

The Board believes that the recommended additional language is not necessary because existing PCAOB standards and rules of the SEC are sufficient to inform users about misstatements in previously issued financial statements. Specifically, AU sec. 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*, requires the auditor to take specific action when he or she concludes that information discovered after the financial statements have been issued would have affected his or her report if the company had not reflected the information in the financial statements and people are currently relying or are likely to rely on the financial statements and auditor's report. According to AU sec. 561.06, the auditor should advise the company to make appropriate disclosure of the newly discovered facts and their impact on the financial statements to persons who are known to be currently relying or who are likely to rely on the financial statements and the related auditor's report.[25]

A U.S. public company that is not a foreign private issuer under SEC rules also is required to file a Form 8–K current report, if it concludes that any previously issued financial statements should no longer be relied upon because of an error in such financial statements.[26] If the auditor has notified the issuer that action should be taken to prevent future reliance on a previously issued audit report, the company also must disclose that information in the Form 8–K.

Changes in Classification

Auditing Standard No. 6 does not require the auditor's report to recognize a change in classification[27] in previously issued financial statements, except for a reclassification that is also a change in accounting principle or correction of a material misstatement.[28] Accordingly, the new standard clarifies that the auditor should evaluate a material change in financial statement classification and the related disclosure to determine whether such a change is also a change in accounting principle or a correction of a material misstatement. For example, in some circumstances, a change in financial statement classification also may be the correction of a misstatement. A restatement to correct the misclassification of an account as short- or long-term or misclassification of cash flows would be both a restatement and reclassification. Therefore, the auditor should evaluate these matters as part of the evaluation of corrections of misstatements. Under Auditing Standard No. 6, a classification change that is also a change in accounting principle should be reported on as a change in accounting principle, and a classification change that is also a correction of a material misstatement should be reported on by the auditor as a restatement.

Some commenters recommended slight revisions to the first sentence of paragraph 11 to clarify the auditor's responsibilities. The first sentence stated that changes in classification in previously issued financial statements do not require recognition in the auditor's report. This seemed to conflict with the second sentence which required the auditor to review a material change in classification and related disclosure to determine whether such a change also is a change in accounting principle or a correction of a material misstatement. The Board agreed with the comments and modified the first sentence to state that a change in classification does not require audit report recognition unless the change represents the correction of a material misstatement or a change in accounting principle. Additionally, in the proposed standard, the Board used the word ''review'' to describe the auditor's responsibility when there has been a material change in financial statement classification. The Board concluded that the word ''evaluate'' better describes the auditor's responsibilities in this area and is more consistent with the other requirements in Auditing Standard No. 6. Accordingly, the Board replaced ''review'' with ''evaluate.''

Description of GAAP and Removal of the GAAP Hierarchy From the Auditing Standards

As discussed previously, the FASB has proposed to incorporate the GAAP hierarchy into its own standards. The Board believes that it is appropriate to locate the GAAP hierarchy in the accounting standards rather than in the auditing standards. Thus, the Board amended its interim standards to remove the GAAP hierarchy from the auditing standards. These amendments do not change the principles in AU sec. 411 for evaluating fair presentation of the financial statements in conformity with GAAP.

Commenters strongly supported removing the GAAP hierarchy from the auditing standards and stated that it was appropriate for the GAAP hierarchy to be contained in the accounting standards. However, one commenter observed that the proposed amendments contain significant differences from the American Institute of Certified Public Accountants' (''AICPA'') Auditing Standards Board's (''ASB'') proposed amendment to AU sec. 411 of the ASB's standards.[29]

[24] Two commenters suggested that the standard include the explanation from the release that the term ''error,'' as used in SFAS No. 154, is equivalent to ''misstatement,'' as used in the auditing standards. The Board agreed and has included that explanation in the final standard.

[25] AU sec. 561.06 also requires that if the effect on the financial statements or auditor's report can promptly be determined, disclosure should consist of issuing, as soon as practicable, revised financial statements and auditor's report. If issuance of the financial statements with an auditor's report for a later period is imminent, a company is permitted to disclose the revision to the financial statements instead of reissuing earlier statements. When the effect on the financial statements cannot be determined without a prolonged investigation, appropriate disclosure would consist of notification that the financial statements and auditor's report should not be relied on and that revised financial statements and auditor's report will be issued upon completion of an investigation.

[26] *See* Securities Exchange Act Rule 13a–11, 17 CFR 240.13a–11.

[27] AU sec. 420.17 also did not require recognition of a change in financial statement classification in the auditor's report.

[28] SFAS No. 154 uses the term ''presentation'' in its definition of an error in previously issued financial statements. The directions in paragraph 11 of the new standard address the auditor's responsibilities for changes in classification, which is an element of the presentation and disclosure financial statement assertion under the auditing standards. *See, e.g.*, paragraph .08 of AU sec. 326, *Evidential Matter*.

[29] In addition, this commenter suggested that U.S. auditing standard-setters should work together to achieve consistency on core auditing standards that are used by almost all auditors of U.S. entities. This

The Board believes that the amendments to AU sec. 411 are consistent with the Board's objective of removing the GAAP hierarchy from the auditing standards, and retaining, or providing, direction necessary for audits of public companies. The significant differences between the ASB's amendments to its AU sec. 411 and the Board's amendments primarily are related to sources of GAAP for governmental entities and direction on the application of accounting principles, which the Board did not believe was appropriate for inclusion in the proposed amendments. In addition, the Board deleted references to Rule 203 of the AICPA's *Code of Professional Conduct*. Rule 203 prohibits auditors from expressing an opinion on financial statements that do not conform to GAAP unless the auditor can demonstrate that due to unusual circumstances the financial statements would have been misleading without departing from GAAP. In 2003, when the Board adopted certain AICPA rules and ASB standards as interim Board standards, the Board did not adopt Rule 203. Consistent with that action, the proposed amendments did not include a reference to Rule 203.

Section-by-Section Description of Amendments to the Interim Auditing Standards

In addition to proposing an auditing standard on evaluating consistency of financial statements, the Board also proposed amendments to other interim auditing standards and related interpretations. The following sections describe key aspects and elements of the amendments to the standards and interpretations, comments received, and changes incorporated in the final amendments.

AU Sec. 410, Adherence to Generally Accepted Accounting Principles

The Board proposed to delete AU sec. 410.02 which discussed the meaning of ''generally accepted accounting principles'' and included other matters that are addressed elsewhere in the standards. However, some commenters suggested that, to improve clarity, AU sec. 410 should retain the sentence in existing AU sec. 410.02 which states that the ''first standard is construed not to require a statement of fact by the auditor but an opinion.''

The Board agreed that, when viewed alone, the first standard of reporting, contained in AU sec. 410.01, does not provide a complete description of the auditor's responsibilities related to fair presentation in conformity with GAAP. However, the first standard of reporting combined with the fourth standard clearly indicates that the auditor is providing a statement of an opinion and not a statement of fact. The fourth standard of reporting provides that the auditor's report shall contain either an expression of opinion regarding the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed. To emphasize that the first and fourth reporting standards must be read together, the Board is including the fourth standard of reporting in the final amendment to AU sec. 410. However, as proposed, the prior statement on the meaning of ''generally accepted accounting principles'' has been deleted from AU sec. 410.02.

AU Sec. 411, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles

The Board proposed to delete AU sec. 411.02, which was a detailed description of GAAP, and AU secs. 411.05, .07 and .09–.15, which described the application of the GAAP hierarchy. The Board proposed to replace the description of GAAP in AU 411.02, with a statement that GAAP refers ''to the accounting principles recognized in the standards of the Financial Accounting Standards Board or in the standards of any other standard-setting body recognized by the U.S. Securities and Exchange Commission.''

However, commenters had concerns about the proposal. One commenter noted that the SEC might allow companies to file a financial statement prepared in conformity with international financial reporting standards (''IFRS'') but not recognize the International Accounting Standards Board, which issues IFRS, as a standard-setting body. Another commenter suggested that to avoid potential confusion by users, the Board should acknowledge that there are other sources of GAAP for entities other than public companies.

In response to these comments, the Board decided to modify its proposed amendment of AU 411. It deleted AU sec. 411.02, which described GAAP, and revised AU sec. 411.01 to indicate that the auditor should look to the requirements of the SEC for the company under audit to identify the accounting principles that are applicable to that company. This change should also clarify that the standard is focused only on the accounting principles that may be used for purposes of the federal securities laws. Other accounting principles may apply to financial statements prepared for other purposes or by entities that are not issuers. The Board also modified AU 411.01 to better emphasize that standard's focus on the meaning of the phrase ''present fairly.''

Finally, as proposed, the Board eliminated AU secs. 411.16 and .17 which set an effective date and transition requirements that are no longer applicable.

AU Sec. 420, Consistency of Application of Generally Accepted Accounting Principles

AU sec. 420 has been superseded by Auditing Standard No. 6, *Evaluating Consistency of Financial Statements.* However, some commenters suggested that parts of AU sec. 420 should have been incorporated into Auditing Standard No. 6. Commenters suggested that guidance on the objective of the consistency standard and the relationship of consistency and comparability, matters that may not affect consistency, and changes expected to have a material future effect provided useful direction.

The Board believes that it is unnecessary to include the preceding direction. The proposed standard clarified that the auditor's report should recognize only those matters that require recognition under the existing auditing standards—*i.e.*, a change in accounting principle or the correction of a material misstatement. The Board does not believe it is necessary to list in a standard those matters that do not require recognition in the auditor's report. Also, the Board believes that paragraph 1 clearly describes the objective of the standard. Paragraph 2 makes it clear that the standard considers comparability to be between periods for the company under audit.

AU Sec. 431, Adequacy of Disclosure in Financial Statements

AU sec. 431 describes the auditor's responsibilities for evaluating the adequacy of disclosures in the financial statements. The amendments address two technical matters relating to that section.

Footnote 1 to AU sec. 431.03 is not consistent with the SEC's independence rules regarding non-audit services and therefore has been eliminated.

commenter also suggested that if the Board continues issuing its own standards for audits of public companies, it should adopt alternative numbering/referencing schemes in order to reduce confusion between its interim standards and the AICPA standards. The Board is considering these comments as it seeks to make continuous improvements to its standard-setting and other programs.

AU sec. 431.04 is an application of the AICPA's *Code of Professional Conduct* regarding the disclosure of confidential client information. In 2003, when the Board adopted certain AICPA rules and ASB standards as interim Board standards, the Board did not adopt Rule 301. Consistent with that action, the proposed amendments would eliminate AU sec. 431.04.

Some commenters expressed concerns that the proposed elimination of AU sec. 431.04 would change the auditor's obligations, or reflected Board policy, regarding the use of confidential client information in connection with evaluating the adequacy of financial statement disclosures. Those commenters generally recognized the limited nature of AU sec. 431.04 and acknowledged that, since in 2003 the Board did not adopt Rule 301, removing a portion of the interim standards based on that rule was a conforming amendment. However, they were concerned that the Board's action might be construed as minimizing the auditor's responsibilities for maintaining the confidentiality of client information.

The Board is aware that many auditors have legal or professional obligations to maintain the confidentiality of client information. These requirements arise from the rules of state licensing authorities,[30] the rules of professional organizations such as the AICPA and the International Federation of Accountants, and the laws of some foreign jurisdictions. The Board's decision to omit Rule 301 from its interim standards was based on a determination that incorporation of that rule was not necessary to fulfill the Board's mandate under Section 103(a)(1) and (3) of the Act. It did not reflect a decision that auditor confidentiality requirements imposed by other authorities were inappropriate. Similarly, in amending AU sec. 431, the Board seeks neither to modify nor to detract from existing confidentiality requirements.

Interpretations of the Auditing Standards in AU 400 Sections

The auditing interpretation in AU sec. 9420.52–.54 has been incorporated into Auditing Standard No. 6 and therefore has been eliminated, as proposed. The auditing interpretations in AU sec. 9411 and the remaining auditing interpretations in AU sec. 9420 are addressed by the accounting standards and therefore also have been eliminated as proposed.[31]

AU Sec. 508, Reports on Audited Financial Statements

In general, the Board has adopted the amendments as proposed. The amendments have conformed this interim auditing standard to Auditing Standard No. 6 on evaluating consistency and the amendments to AU secs. 410 and 411, described above. For example, AU sec. 508.16 now specifically identifies the matters related to consistency of the company's financial statements that should be recognized in the auditor's report. Similarly, AU sec. 508.17A provides the requirements for evaluating consistency, that also is in paragraph 7 of Auditing Standard No. 6. AU secs. 508.17B and C, and AU sec. 508.18A provide separate requirements for reporting on changes in accounting principles and restatements, as discussed previously.

In addition, the amendments eliminate AU sec. 508.14–.15. Those paragraphs were an application of AICPA Ethics Rule 203, which, as previously noted, was not adopted as an interim standard by the Board.[32]

Finally, in light of the definitions in SFAS No. 154, the amendments change references to ''restatements'' to the more general term ''adjustments'' to refer broadly to changes to previously issued financial statements that may result from either a correction of a misstatement or a change in accounting principle.[33]

References to APB Opinion No. 20

In addition, the Board has adopted other amendments to update references to APB Opinion No. 20, which was superseded by SFAS No. 154. Accordingly the Board amended AU sec. 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*, footnote 3 to paragraph .06, to reference paragraphs 25 and 26 of SFAS No. 154. For AU sec. 328, *Auditing Fair Value Measurements and Disclosures*, footnote 4 to paragraph .19, the Board referenced paragraph 20 of SFAS No. 157, *Fair Value Measurements*, which states that a change in valuation technique or its application is appropriate if the change results in a measurement that is equally or more representative of fair value in the circumstances. This replaces a reference to the preferability requirement in SFAS No. 157 because that requirement does not apply to a change in a company's method for determining fair value. Paragraph 20 is the accounting guidance applicable to a company's change in method for determining fair value.

Effective Date

The standard and amendments will be effective 60 days after approval by the SEC.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(a) By order approve such proposed rule; or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[30] For example, confidentiality requirements are included in the provisions of the Uniform Accountancy Act, which has been enacted in some form by many states.

[31] One commenter suggested that some of the auditing interpretations should be retained because the guidance is still relevant. The Board considered the view of this commenter but decided to eliminate the interpretations because other auditing standards provided the necessary direction regarding the matter addressed in the interpretation, the interpretation dealt with items not requiring recognition in the auditor's report, or the interpretation was related to an accounting consideration of the company.

[32] One commenter expressed concern about deleting these paragraphs and suggested that, if the Board's intent was to delete all reference to the AICPA Code of Professional Conduct from the Board's interim standards, the Board should indicate the professional ethics that auditors should follow when conducting audits according to PCAOB standards. The Board's Rules 3500T and 3600T describe the Board's interim ethics and independence standards, respectively. These standards include certain provisions from the AICPA's Code of Professional Conduct. In addition, the Board has adopted ethics and independence rules concerning independence, tax services, and contingent fees. *See* PCAOB Release No. 2005–014 (July 26, 2005). State law and membership organizations may impose additional requirements.

[33] Some commenters suggested that certain other changes were needed to AU sec. 508 or that certain amendments were not necessary. For example, some commenters suggested eliminating AU sec. 508.57 and retaining the original terminology in AU secs. 508.73—.74. The Board decided that some of the suggested changes would change existing practice, such as the elimination of AU sec. 508.57, and were outside the scope of this project. For the others, the Board concluded that the amendments were consistent with the direction in Auditing Standard No. 6. In addition, one commenter believed that there were inconsistencies between the proposed amendments to AU sec. 508 and Staff Questions and Answers, *Adjustments to Prior-Period Financial Statements Audited By a Predecessor Auditor*. However, the Board reviewed the Staff Questions and Answers and did not agree that there were inconsistencies with the proposed amendments to AU sec. 508.

including whether the proposed rule is consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number PCAOB 2008–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB 2008–01. 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/pcaob/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do 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 No. PCAOB–2008–01 and should be submitted on or before August 26, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17893 Filed 8–4–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58243; File No. SR–CBOE–2008–73]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Permanent Approval of the Customer Portfolio Margin Pilot Program

July 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2008, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. CBOE has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to make permanent the customer portfolio margin program codified in Exchange Rules 9.15(c)—*Delivery of Current Options Disclosure Documents*, 12.4—*Portfolio Margin*, 13.5—*Customer Portfolio Margin Accounts*, and 15.8A—*Risk Analysis of Portfolio Margin Accounts*. CBOE is not proposing any textual changes to its Constitution or Rules. The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's customer portfolio margining program, as previously approved by the Commission, allows broker-dealers, for eligible securities, to compute customer margin requirements based on a portfolio margining methodology.[5] The portfolio margining program is operating under a pilot program that is scheduled to expire on July 31, 2008.[6]

Amendments to the rules effective April 2, 2007, made equities, equity options, narrow-based index options, unlisted derivatives and security futures eligible for portfolio margining.[7] The Exchange believes it has had sufficient time to assess the operation of the pilot program and has not encountered any problems or difficulties relating to the pilot program since its inception. For this reason, the Exchange proposes that the Commission approve the pilot program on a permanent basis.[8]

2. Statutory Basis

Because the portfolio margin pilot program has promoted greater reasonableness, accuracy and efficiency with respect to margin requirements and better aligns margin requirements with actual risk, the Exchange believes that this proposed rule change is consistent with Section 6(b) of the Exchange Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to perfect the mechanism of a free and open market, and to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (approving amendments to the program on a pilot basis to expire on July 31, 2007).

[6] *See* Exchange Act Release No. 56109 (July 19, 2007), 72 FR 41365 (July 27, 2007) (extending the pilot program through July 31, 2008).

[7] *See* Exchange Act Release No. 54919, *supra* note 1.

[8] The Exchange understands that FINRA filed a similar proposed rule change that, if approved, would continue to provide a uniform approach with respect to portfolio margining. *See* (SR–FINRA–2008–041).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, which would make the change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the customer portfolio margining program to continue uninterrupted as it would otherwise expire on July 31, 2008.[13] Accordingly, the Commission designates the proposed rule change effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–73. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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–CBOE–2008–73 and should be submitted on or before August 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17841 Filed 8–4–08; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58251; File No. SR–FINRA–2008–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Making the Portfolio Margin Pilot Permanent

July 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to make permanent the portfolio margin pilot program set forth in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g).[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to members of both FINRA and the NYSE, referred to as Dual Members.

portfolio margin pilot program permits members to margin certain products according to a prescribed portfolio margin methodology and is set to expire on July 31, 2008. There is no change to the rule text with this proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 12, 2007, FINRA (then known as NASD) filed SR–NASD–2007–013 for immediate effectiveness to establish a portfolio margin pilot program that permits member firms to elect to margin certain products according to a prescribed portfolio margin methodology.[5] The portfolio margin pilot program is substantially similar to margin rule amendments by the NYSE and the Chicago Board Options Exchange (''CBOE''), which were approved by the Commission.[6] Consistent with the amended NYSE and CBOE portfolio margin programs, the pilot, as proposed in SR–NASD–2007–013, started on April 2, 2007 and ended on July 31, 2007. The pilot program was extended for a one-year period to July 31, 2008, also consistent with the NYSE and CBOE portfolio margin programs.[7]

FINRA is proposing to make permanent the pilot program contained in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g). FINRA has not encountered any problems or difficulties relating to the pilot program since its inception and believes that the program better aligns margin requirements with the actual risk of hedged products. For these reasons, FINRA proposes to adopt the portfolio margin program on a permanent basis.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change is August 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes making the portfolio margin program permanent is appropriate as the program better aligns the margin requirements with actual risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requests that the Commission waive the 30-day operative delay, which would make the change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the customer portfolio margining program to continue uninterrupted as it would otherwise expire on July 31, 2008.[11] Accordingly, the Commission designates the proposed rule change effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[5] *See* Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of Filing and Immediate Effectiveness of SR–NASD–2007–013).

[6] *See* Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR–NYSE–2006–13, relating to further amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR–NYSE–2005–93, relating to amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 52031 (July 14, 2005) 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19, relating to the NYSE's original portfolio margin pilot). *See also* Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR–CBOE–2006–14, relating to amendments to the CBOE's portfolio margin pilot); Exchange Act Release No. 52032 (July 14, 2005) 70 FR 42118 (July 21, 2005) (SR–CBOE–2002–03, relating to the CBOE's original portfolio margin pilot).

[7] *See* Exchange Act Release No. 56108 (July 19, 2007) 72 FR 41375 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR–NASD–2007–045). *See also* Exchange Act Release No. 56107 (July 19, 2007) 72 FR 41377 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR–NYSE–2007–56, relating to extension of the NYSE portfolio margin pilot program to July 31, 2008) and Exchange Act Release No. 56109 (July 19, 2007) 72 FR 41365 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2007–75, relating to extension of the CBOE portfolio margin pilot program to July 31, 2008).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has fulfilled this requirement.

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

Number SR–FINRA–2008–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–041. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2008–041 and should be submitted on or before August 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17890 Filed 8–4–08; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58246; File No. SR–NYSE–2008–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate the Exceptional Messaging Fee

July 29, 2008.

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 28, 2008, the New York Stock Exchange LLC (the ''Exchange'' or the ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the exceptional system message fee of $0.01 per exceptional system message. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of August 1, 2008. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the exceptional system message fee of $0.01 per exceptional system message.[3] This fee was originally introduced to compensate the Exchange for the cost of the incremental system capacity that needed to be readily available to accommodate trading strategies that resulted in significant volumes of system messages and cancellations. Since that time, the Exchange has increased its system capacity to a degree that it no longer incurs significant costs in maintaining system capacity to accommodate these sorts of trading strategies. As such, the Exchange no longer needs the fee revenue to cover the related costs. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of August 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6[4] of the Act, in general, and furthers the objectives of section 6(b)(4),[5] in particular, in that it is designed provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed elimination of the exceptional message fee is equitable as the costs it was designed to defray are not now material to the Exchange and, therefore, the Exchange will not have to recoup the lost revenues through the imposition of any other fees or charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[3] An exceptional system message is defined as any system (*i.e.*, SuperDOT®, the Exchange's Designated Order Turnaround System) message, as measured by mnemonic (mnemonics, which are alphabetical identifiers issued by the NYSE to its member firms and their customers, are required for order entry and identification purposes) on a daily basis, that exceeds the following criteria: (i) The ratio of a mnemonic's share of the total system messages to the mnemonic's share of total executed system volume exceeds 10:1; and (ii) the mnemonic's cancelled system orders as a percentage of its total system orders exceeds 90.0%. *See* Securities Exchange Act Release No. 53071 (January 6, 2006), 71 FR 2281 (January 13, 2006) (SR–NYSE–2005–91).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder because it establishes or changes a due, fee, or other charge imposed on members by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–64. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2008–64 and should be submitted on or before August 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17842 Filed 8–4–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58253; File No. SR–NYSE–2008–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt on a Permanent Basis a Pilot Program Which Allows the Exchange To Adjust the Earnings of Companies for Purposes of Its Earnings Standard by Reversing the Income Statement Effects of Changes in Fair Value of Financial Instruments Extinguished at the Time of Listing

July 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2008, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis an amendment to the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (the ''Manual'') which is currently in force pursuant to a pilot program (the ''Pilot Program''). The amendment will enable the Exchange to adjust the earnings of companies by reversing the income statement effects for all periods of any changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing.

The text of the proposed rule change is available at *http://www.nyse.com*, the NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an initial public offering (''IPO'') by reversing the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

converted into or exercised for common stock of the company at the time of listing. The proposed amendment was originally implemented for a six-month period as a Pilot Program.[3] The Pilot Program expired and was subsequently renewed for an additional three months, expiring on September 2, 2008.[4]

Nonpublic companies engaging in pre-IPO financings often raise capital through the sale of preferred stock and warrants to purchase preferred stock. Preferred stock and preferred stock warrants are also sometimes issued by pre-IPO companies to service providers in lieu of cash compensation. Typically, at the time of the company's IPO, the preferred stock is converted into common stock and the preferred stock warrants are automatically exercised and the underlying preferred stock is converted into common stock of the company. In some cases, companies may also redeem some or all of the outstanding preferred stock with a portion of the proceeds from the IPO.

Some pre-IPO companies have determined that they must record in earnings changes in the fair value of certain financial instruments classified as liabilities. As the fair value of a pre-IPO company's equity often increases as the company gets closer to its IPO, many companies have had to record significant reductions in earnings associated with increases in the fair value of the preferred stock warrant liability. In certain cases, the impact on the company's earnings as reported under generally accepted accounting principles (''GAAP'') of the preferred stock liability causes otherwise qualified companies to fail to qualify under the Exchange's earnings standard. Under the Exchange's current rules, the Exchange cannot list these companies even though the preferred stock warrant liability will be extinguished at the time of the IPO by conversion into common stock or redemption out of the proceeds of the IPO.

The Exchange believes that it is appropriate to exclude the effects of changes in fair value of a financial instrument classified as a liability from a company's earnings where the financial instrument is being retired at the time of a company's listing either out of the proceeds of a concurrent offering or by conversion into common stock at the time of listing. The Exchange believes that adjusting company earnings for charges arising out of the changes in fair value of financial instruments that are retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock at the time of listing is consistent with the adjustments that are currently permitted under Section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

As with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. Such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

As the Exchange gains experience in listing companies in reliance upon the proposed amendment, we will continue to carefully reevaluate its appropriateness. If we become aware that companies listed pursuant to the proposed amendment have difficulty complying with our continued listing standards, we will inform the Commission and discuss with the Commission the desirability of the continued use of the provision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[6] in particular in that it is designed 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. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Exchange Act in that it provides for an adjustment to listing applicants' historical financial results that is consistent with other adjustments already permitted under the Exchange's earnings standard and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

[3] *See* Securities Exchange Act Release No. 55974 (July 6, 2007), 72 FR 37067 (June 28, 2007) (SR–NYSE–2007–52). [sic]

[4] *See* Securities Exchange Act Release No. 57905 (June 2, 2008), 73 FR 32613 (June 9, 2008) (SR–NYSE–2008–43).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSE–2008–57. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–57 and should be submitted on or before August 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17891 Filed 8–4–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58254; File No. SR–NYSE–2008–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Make Permanent a Pilot Program Under Which the Exchange Excludes From Its Earnings Standard Gains or Losses From Extinguishment of Debt Prior to Maturity

July 30, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2008, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis an amendment to the earnings standard of section 102.01C(I) of the Exchange's Listed Company Manual (the ''Manual'') which is currently in force pursuant to a pilot program (the ''Pilot Program''). The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an IPO by reversing the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing.

The text of the proposed rule change is available at *http://www.nyse.com*, the NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard of section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The adjustment will relate only to gains or losses incurred in the three-year period under examination for purposes of the earnings standard. The proposed amendment was originally implemented for a six-month period as a Pilot Program.[3] The Pilot Program expired and was subsequently renewed for an additional three months, expiring on September 2, 2008.[4]

Prior to the promulgation of Statement of Financial Accounting Standards No. 145 (''SFAS No. 145'') in 2002, Financial Accounting Standards Board Statement No. 4 (''FASB No. 4'') required that gains and losses from the extinguishment of debt prior to its maturity that were included in the determination of net income be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. SFAS No. 145 rescinded FASB No. 4 and, as a result, gains or losses in connection with the extinguishment of debt prior to its maturity are now generally included in the calculation of operating earnings under generally accepted accounting principles (''GAAP''). As a result, some companies that would not otherwise be qualified to list may qualify as a result of the inclusion in pre-tax income of gains from the extinguishment of debt prior to its maturity. In addition, some prospective listed companies whose operating earnings would have met the requirements of the Exchange's pre-tax earnings test prior to 2002 are now not qualified to list as they are required to include losses from the extinguishment of debt prior to its maturity in pre-tax income. In the Exchange's experience, these gains and losses are primarily noncash in nature. The gains generally represent the accelerated accrual of original issue discount, while the losses generally represent the remaining unamortized portion of costs incurred at the time of initial borrowing.

The Exchange believes that it is appropriate to return to its pre-2002 approach of excluding gains and losses from debt extinguishment from pre-tax earnings as calculated for purposes of its earnings standard. The purpose of the earnings standard is to determine the suitability for listing of companies on a

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 55974 (July 6, 2007), 72 FR 37067 (June 28, 2007) (SR–NYSE–2007–52). [sic]

[4] *See* Exchange Act Release No. 57903 (June 2, 2008), 73 FR 32610 (June 9, 2008) (SR–NYSE–2008–43).

forward-looking basis in light of a sustained demonstration of strong earnings. As such, the Exchange does not believe that it is relevant to include in pre-tax earnings gains and losses from the extinguishment of debt prior to its maturity that are principally nonrecurring in nature. Additionally, we note that the analyst community also routinely exclude these gains and losses from their analyses in making recommendations as to the desirability of investing in companies' publicly-traded equity securities. The Exchange believes that adjusting company earnings for gains and losses from the extinguishment of debt prior to its maturity is consistent with the adjustments that are currently permitted under Section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

As with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation, Inc. will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. Such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

As the Exchange gains experience in listing companies in reliance upon the proposed amendment, we will continue to carefully reevaluate its appropriateness. If we become aware that companies listed pursuant to the proposed amendment have difficulty complying with our continued listing standards, we will inform the Commission and discuss with the Commission the desirability of the continued use of the provision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [5] of the Exchange Act, in general, and furthers the objectives of section 6(b)(5) of the Exchange Act,[6] in particular, in that it is designed 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. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Exchange Act in that it provides for an adjustment to listing applicants' historical financial results that is consistent with other adjustments already permitted under the Exchange's earnings standard and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–58. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–58 and should be submitted on or before August 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17892 Filed 8–4–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11299]

Nebraska Disaster Number NE–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA—1770—DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 through 06/24/2008.

Effective Date: 07/29/2008.

Physical Loan Application Deadline Date: 08/19/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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 Private Non-Profit organizations in the State of NEBRASKA, dated 06/20/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Wheeler.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–17939 Filed 8–4–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11297 and #11298]

Nebraska Disaster Number NE–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Nebraska (FEMA—1770—DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 through 06/24/2008.

Effective Date: 07/29/2008.

Physical Loan Application Deadline Date: 08/19/2008.

EIDL Loan Application Deadline Date: 03/20/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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 Presidential disaster declaration for the State of Nebraska, dated 06/20/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Holt.

Contiguous Counties: (Economic Injury Loans Only):

Nebraska: Antelope, Boyd, Keya Paha, Knox, Rock, Wheeler.

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. E8–17942 Filed 8–4–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11342]

Texas Disaster #TX–00298

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA—1780—DR), dated 07/24/2008.

Incident: Hurricane Dolly.

Incident Period: 07/22/2008 and continuing.

Effective Date: 07/24/2008.

Physical Loan Application Deadline Date: 09/22/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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: Notice is hereby given that as a result of the President's major disaster declaration on 07/24/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Aransas, Bexar, Brooks, Calhoun, Cameron, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio, Starr, Victoria, Willacy.

Contiguous Counties (Economic Injury Loans Only):

Atascosa, Bandera, Bee, Comal, Dewitt, Duval, Goliad, Guadalupe, Jackson, Jim Hogg, Kendall, Lavaca, Live Oak, Matagorda, Medina, Wilson, Zapata.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and for economic injury is 11342.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–17944 Filed 8–4–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2007–0108]

National Task Force To Develop Model Contingency Plans To Deal With Lengthy Airline On-Board Ground Delays

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays.

DATES: The Task Force meeting is scheduled for August 25, 2008, from 8:30 a.m. to 5 p.m., Eastern Time.

ADDRESSES: The Task Force meeting will be held at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

FOR FURTHER INFORMATION CONTACT: Livaughn Chapman, Jr., or Kathleen Blank-Riether, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W–96–429, Washington, DC 20590–0001; *Phone:* (202) 366–9342; *Fax:* (202) 366–7152; *e-mail: Livaughn.Chapman@dot.gov*, or *Kathleen.Blankriether@dot.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the General Services Administration regulations covering management of Federal advisory committees, 41 CFR Parts 102–3, this notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The meeting will be held on August 25, 2008, between 8:30 a.m. and 5 p.m. at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

DOT's Office of Inspector General recommended, in its audit report, entitled ''Actions Needed to Minimize Long, On-Board Flight Delays,'' issued on September 25, 2007, that the Secretary of Transportation establish a national task force of airlines, airports, and the Federal Aviation Administration (FAA) to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an emergency. To effectuate this recommendation, on January 3, 2008, the Department, consistent with the requirements of the FACA, established the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The first meeting of the Task Force took place on February 26, 2008. This will be the fifth meeting of the task force.

The agenda topics for the August 25, 2008, meeting will include the following: (1) A final review and discussion of a draft model contingency plan for dealing with lengthy tarmac delays, developed by the Contingency Plan Working Group, the working group that is tasked with reviewing existing airline and airport contingency plans for extended tarmac delays for best practices and developing a model contingency plan; and (2) one or more presentations on recent tarmac delay events and efforts to avoid them.

Attendance is open to the public, and time will be provided for comments by members of the public. Since access to the U.S. DOT headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the Department contact noted above no later than ten (10) calendar days prior to the meeting. Attendance will be necessarily limited by the size of the meeting room.

Members of the public may present written comments at any time and, at the discretion of the Chairman and time permitting, oral comments at the meeting. Any oral comments permitted must be limited to agenda items and will be limited to five (5) minutes per person. Members of the public who wish to present oral comments must notify the Department contact noted above via e-mail that they wish to attend and present oral comments at least ten (10) calendar days prior to the meeting. For the August 25, 2008, meeting, no more than one hour will be set aside for oral comments. Although written material may be filed in the docket at any time, comments regarding upcoming meeting topics should be sent to the Task Force docket, (10) calendar days prior to the meeting. Members of the public may also contact the Department contact noted above to be placed on the Task Force mailing list.

Persons with a disability requiring special accommodations, such as an interpreter for the hearing impaired, should get in touch with the Department contact noted above at least seven (7) calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations covering management of Federal advisory committees.

Issued on: July 30, 2008.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.

[FR Doc. E8–17904 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2008, vol. 73, no. 94, page 27885. Collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof.

DATES: Please submit comments by September 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Malfunction or Defect Report.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0003.

Form(s) 8010–4.

Affected Public: An estimated 57,736 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 9 minutes per response.

Estimated Annual Burden Hours: An estimated 8,653 hours annually.

Abstract: Collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Tansportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 28, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–17757 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2008, vol. 73, no. 95, page 28184. The information collected is used by the FAA to register aircraft or hold an aircraft in trust.

DATES: Please submit comments by September 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Registration.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0042.

Forms(s) AC Forms 8050–1, 8050–2, 8050–4, 8050–98, 8050–117.

Affected Public: An estimated 201,016 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 32 minutes per response.

Estimated Annual Burden Hours: An estimated 107,188 hours annually.

Abstract: The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Tansportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 28, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–17758 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA–2008–0232]

Commercial Driver's License: Commonwealth of Virginia, Department of Motor Vehicles; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA has received an application from the Commonwealth of Virginia Department of Motor Vehicles (Virginia DMV) for an exemption from provisions of the Agency's commercial driver's license (CDL) requirement that each CDL issued by the State contain a color photograph of the driver. Virginia DMV proposes that it be allowed to use a black and white, laser-engraved photograph in lieu of a color photograph. Virginia DMV believes that the issuance of CDLs with laser-engraved black and white photographs would enhance the security of the credential and assist law enforcement officials with the identification of the CDL holder. The FMCSA requests public comment on Virginia DMV's application for exemption.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number [FMCSA–2008–0232] by any of the following methods:

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For docket access to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476), or you may visit *http://www.regulations.gov*.

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day,

365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or a copy of print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Virginia DMV requests an exemption from 49 CFR 383.153(a)(4), which requires each CDL to contain a color photograph of the driver. A copy of the exemption application is in the docket referenced at the beginning of this notice. Virginia DMV proposes that it be allowed to use a black and white, laser-engraved photograph on Virginia-issued CDLs in lieu of a color photograph. In its application for exemption, Virginia DMV explains that in January 2008, the Department of Homeland Security (DHS) issued the final rules on the REAL ID Act of 2005. As provided in the DHS rules 6 CFR 37.17(e)(2) provides that the photographs on REAL ID compliant driver's licenses and identification cards ''may be in black and white or color.''

Virginia DMV believes that a black and white photograph is more effective than a color photograph in providing security and facilitating the proper identification of the license holder. It explains that a black and white photograph created with a laser cannot easily be altered. In addition, Virginia DMV explains that a black and white photograph enhances the identification of an individual since it places the focus on the actual facial features of the individual rather than on characteristics that can easily be altered, such as hair or eye color. Virginia DMV believes that the issuance of CDLs with black and white photographs would enhance the security of the credential and assist law enforcement officials with the identification of the CDL holder. In its application for exemption Virginia DMV provides information from its contractor, CBN Secure Technologies, Inc., that offers further explanation regarding the advantages of using black and white photographs on CDLs.

Virginia DMV's proposed exemption would apply to all CDLs issued by the Commonwealth of Virginia. Presently, approximately 216,000 Virginians hold valid CDLs. Virginia DMV anticipates that, if the requested exemption is granted, it would begin issuing CDLs with black and white photographs in January 2009.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Virginia DMV's application for an exemption from 49 CFR 383.153(a)(4).

The Agency will consider all comments received by close of business on September 4, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: July 25, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–17860 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 381 applications from individuals who requested exemptions from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable two-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated these 381 individual exemption requests on their merits and made the determinations that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption

request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 55 applicants lacked sufficient driving experience during the three-year period prior to the date of their application:

Balsman, Stanley W.
Barr, Michael J.
Berheimer, Mark S.
Biddison, Jr., William G.
Bishop, Jr., Raymond E.
Brown, Dean N.
Burgess, James W.
Burns, Jerry A.
Campos, Basiliom
Cox, Michael L.
Crosby, Blake L.
Dunn, Darby K.
Dykes, Robert L.
Dykman, David L.
Eaton, Matthew C.
Edenfield, Christopher S.
Ellis, Jeffery K.
Freeman, Jr., George
Furcht, Thomas C.
Gaither, Larry N.
Gary, Dean A.
Goodapple, Jeanette
Hand, Terry O.
Hankins, Gerald W.
Harper, Larry
Hickman, James W.
Higgins, David N.
Ingram, George M.
Lair, Christopher
Lanuez, Richard A.
Mans, David R.
Martinez, Michael M.
McKinley, Haley E.
Morris, Richan A.
Ottens, John P.
Penner, Stuart
Phillips, Leonoth J.
Prill, Robert J.
Prouty, Norman L.
Ramirez, Blas
Rhodes, Jerry W.
Rodriguez, Juan
Ruzicka, Kent W.
Sarphie, Jeffrey E.
Schmidt, Jr., Herbert J.
Screws, John
Sharp, Richard
Shultz, Rodney A.
Sida, Jose M.
Smallman, David S.
Swann, III, George S.
Ward, Lawrence R.
Watts, Gary L.
Williamson, Jeremy D.
Zehner, Jon T.

The following 49 applicants did not have any experience operating a CMV.

Alvarado, Roberto
Ashford, Michael
Batteiger, Alan S.
Bodie, Jay M.
Broyles, Carl D.
Buck, Donald H.
Butry, William N.
Carter, Richard L.
Cozart, Ste'phon J.
Dempsey, John D.
DeSmith, Robert D.
Dixon, Daryl D.
Doman, Gary
Easton, James A.
Frandin, Kelvin
Hansell, Brad
Hartzell, Sean M.
Haymon, Roland L.
Hudgins, James M.
Hurst, Bryan E.
Ivery, Mathias
Jensen, John
Jones, Anleka E.
Jones, Dale A.
Kadlec, Mark J.
Knapp, Gerald W.
Lacosse, Chad
Langford, Harry D.
Main, Stacy A.
McIntosh, Thomas P.
McWilliams, Joseph B.
Moore, Arthur L.
Moreno, Salvador P.
Moultrie, Jr., Moses
Nesto, Gina M.
Paynter, Paul S.
Ratcliff, Jr., Robert
Rexhaj, Avni
Rhoads, Matthew S.
Rogers, Adam E.
Scanlon, David
Shuff, William H.
Silva, Hector
Steemblock, Pam J.
Thomas, James
Townsend, Dewayne K.
Ugarte, Salvador
Veloz, Richard S.
Weems, Timothy M.

The following 82 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency.

Alford, David
Anderson, Victor A.
Arendt, Dennis
Bard, James B.
Batton, Ralph S.
Bejarano, Luis A.
Bellon, Steven W.
Bohle, Ernest E.
Borkholder, Vernon
Braswell, Jimmie E.
Brenaman, Bradley A.
Burnam, Jonathan C.
Burns, John
Carrington, Randal
Carswell, Tracy W.
Carter, Ronald
Chauhan, Satwinder S.
Clark III, Curtis
Cleveland, Travis E.
Corrales, Ramon A.
Courville, Kenneth
Dale, Lawerence E.
Davidson, John
Davis, Donald
Dotter, Kurt E.
Edwards, Cleveland
Ellis, Bruce A.
Fierro, Saul
Fleming, William D.
Garvin, Jay M.
Greenfield, Larry L.
Hare, Dwight A.
Hargrove, Raymond C.
Harrison, Timothy E.
Heaps, Isaac P.
Hendren, Dillon L.
Henifin, Mark
Hever, Jr., Frank S.
Holder, Samuel
Honeywell, Verne A.
Johnson, William C.
Jones, Paul D.
Julian, Charles
Lab, Kenneth Wade
Lampus, Jr., Richard D.
Lofthus, Barry G.
Makus, Fred A.
Messier, Charles D.
Miller, Vernie H.
Molenaar, Dale R.
Moore, Richard E.
Nevezi, John
Nickel, Jeffrey D.
Nowviock, Al V.
Parks, Willie L.
Perry, Sr., Christopher B.
Price, Dean L.
Prince, Kenneth W.
Proctor, Gilbert D.
Quarles, Chad M.
Rebhahn, Craig
Reece, Tommy R.
Rhodes, Clifford W.
Rigney, Kevin J.
Roberts, Kyle
Robertson, Billy D.
Shaw, Mark R.
Slayton, Johnny J.
Stanten, Leonard R.
Stanton, Larry E.
Stavedahl, Curtis R.
Strub, Jeremy M.
Survis, Thomas L.
Thomas, George W.
Thompson, Joe L.
Vasquez, Joel
Vickerman, Ronald E.
Von Haden, Norman L.
Warnock, Melvin
White, Jeffrey S.
Williams, Charles
Woosley, Darrell F.

The following 32 applicants did not have 3 years of recent experience

driving a CMV with the vision deficiency.

Boersma, Michael L.
Brock, Jim
Dahleen, Larry A.
Foster, Kelly L.
Frank, Bradley D.
Frazier, Jr., Willie
Furgerson, Danny F.
Garza, Jr., Gabino
Gelats, Miguel E.
Gillespie, Larry D.
Gowens, Eddie L.
Hettinger, Edward
Hill, Jr., Albert J.
Jerkovich, Frank
Kennedy, John E.
Leonard, Richard B.
Lococo, Anthony
McDaniel, Bobby G.
McGrew, Charles E.
McLaughlin, James F.
Olson, Harold J.
Pate, Ronald L.
Paulson, Michael A.
Perryman, Duane R.
Rush, Jr., Kenneth L.
Schafer, Justin M.
Seagroves, Larry K.
Serrano, Manuel A.
Smiley, Richard
Smith, Matthew
Steckmyer, Mark A.
Tisdale, Raphis L.

The following 51 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions.

Bennett, Stephen T.
Bierschbach, James B.
Brawley, Lawrence
Clem, Michael G.
Cliffe, Terry L.
Conner, Harvey D.
Cumbee, Eddie L.
Dewey, Scott H.
Dixon, David J.
Espinoza, Miguel H.
Fossum, Jr., Kyle K.
Games, George J.
Goetze, Horst W.
Greenwood, James
Greil, Bruce J.
Hammond, Latashia L.
Handy, Kenneth L.
Hartigan, Patrick T.
Hilmer, Steven H.
Isadore, James
Johnson, Charles
Keeling, Alton A.
Kleen, Keith D.
Kniesly, Nickolas L.
Kushak, Joseph K.
Lewis, Christopher W.
Maxwell, Brian A.
McGinley, Patrick M.
Mishler, Manford C.
Mozee, Phillip H.
Nordrum, Joseph H.
Ontiiveros, Joe E.
Pagan, Pedro L.
Parker, Milton
Perry, Suzanne M.
Peterson, David A.
Popp, Francis
Prewett, Paul
Prince, Kenneth N.
Robbins, Thomas G.
Serfass, Eugene A.
Simmons, Rodger S.
Taylor, Wade D.
Terry, Charles A.
Toews, Delton D.
Varga, Paul G.
Walker, Ronald L.
West, Andrew F.
Whitehead, Hilliard
Wilburn, Wesley L.
Yeilding, Robert A.

One applicant, Larry D. Neely, had more than 2 commercial motor vehicle violations during a 3-year period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, Sean C. Beland, did not have sufficient peripheral vision in the better eye to qualify for an exemption.

One applicant, Donald M. Neil, had other medical conditions making applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13).

One applicant, Danny F. Ahlgren, had more than 2 serious CMV violations within a three-year period. Each applicant is allowed a total of 2 moving violations, one of which can be serious.

The following 11 applicants had commercial driver's licenses suspensions during the three-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the three-year period.

Carman, Mitchell L.
Couch, John L.
Day, Richard R.
MacInnis, Robert J.
Pellom, Jr., Evert
Potthast, Michael D.
Skinner, Shane
Turley, Douglas M.
Turner, Emerson J.
Vidal, Moises L.
Witzel, Michaell

The following 7 applicants did not have verifiable proof of commercial driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

Farrow, Harold J.
Harris, Dave N.
Hough, Norman
Ochse, Raymond K.
Raley, Johnnie
Staley, Ronald W.
Wood, Wayne

The following 11 applicants did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the three-year period.

Barnes, Matthew D.
Harris, Richard J.
Howell, David
Lins, James P.
Loebrick, Elvin E.
Lopez, Daniel L.
Rounsley, Michael W.
Routin, Kevin L.
Sancho, Mark
Updegrove, Greggory
Young, Walter H.

Two applicants, James W. Harris and Gene Schipper, were denied because their optometrist/ophthalmologist was not willing to state that Mr. Harris and Mr. Schipper are able to operate a CMV from a vision standpoint.

The following 27 applicants were denied for miscellaneous reasons.

Austin, David
Bottorff, Robert M.
Brown, Charlene
Bryan, Elvis J.
Campbell, Richard
Eakin, Bobby D.
Engle, Denice M.
Gardner, Eric W.
Gardner, James
Grant, Paul
Hilliard, James
Houle, Douglas F.
Jones, Dennis W.
Koceja, Douglas
Lake, Joseph
Lambert, Kevin R.
Livingston, Jr. Donald R.
Lowe, Jerry
Lowery, Eric R.
Moser, Gary P.
Oestmann, Ronald L.
Reed, Jr., James C.
Reid, Robert C.
Schreifels, Eldred
Sherman IV, Charles A.
Vazquez, Santos
Williams, Roy G.

One applicant, Thomas Williams, has not had stable vision for a 3-year period.

Two applicants, Plynie A. Deen and Leonard L. LaChance, never submitted required documents.

One applicant, Taylor B. Villeneuve, was a Canadian applicant.

Two applicants, Gene R. Foss and Earnest M. Meeks, did not meet the vision standard in the better eye.

Finally, the following 44 applicants met the current federal vision standards.

Exemptions are not required for applicants that meet the current regulations for vision.

Abadie, Ronald G.
Ashe, Harry R.
Barr, Frank H.
Beier, Roger H.
Benton, Thomas F.
Bickers, Larry M.
Biggs, Dwayne A.
Brooks, Sherry L.
Brown, Bruce S.
Butler, Steven
Caldwell, Kenneth
Caluen, Robert G.
Costlow, James K.
Crachy, Mark S.
Czarneski, Franklyn J.
Downey, Michael
Duby, James C.
Ericson, Matthew A.
Farr, Thomas W.
Gallardo, Julio
Hambrick, Gary J.
Hoffman, Daryl A.
Jackson, Eddie, L.
Johnson, Donald
Johnson, Nicholas
Krill, Harold J.
Leary, Kevin C.
Ledford, David L.
Leriche, Samson
Majewski, Mariusz
Mann, Jonathan D.
McGaffey, Wesley L.
Myers, Michael
Nyman, Timothy C.
Oldacker, Edward
Peterson, Donald T.
Porter, Larry H.
Pringle, Juanita F.
Savely, Danny W.
Schwab, Charles F.
Stokes, Jr., Linwood L.
Tibbetts, Norman
Tousignant, Daniel
Whall, David

Issued on: July 30, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–17858 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2008–0175]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 47 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before September 4, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–0175 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 47 individuals listed in this notice have recently requested exemptions from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Robert V. Balmes

Mr. Balmes, age 40, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Balmes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Illinois.

David R. Bauerdorf

Mr. Bauerdorf, 34, has had ITDM since 1993. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring;

and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bauerdorf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

Stephen R. Bortz

Mr. Bortz, 57, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bortz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

John A. Broeker

Mr. Broeker, 68, has had ITDM since 1997. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Broeker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to operate any motor vehicle with a gross weight rating of less than 26,001, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

Daniel A. Brown

Mr. Brown, 32, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

Floyd G. Burbach

Mr. Burbach, 46, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burbach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Kenneth M. Brinker

Mr. Brinker, 60, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brinker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Richard A. Bruyere

Mr. Bruyere, 44, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bruyere meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Randie L. Burrows

Mr. Burrows, 49, has had ITDM since 1997. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burrows meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Scott R. Butler

Mr. Butler, 46, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Jay P. Cave

Mr. Cave, 51, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cave meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Jeffrey A. Clark

Mr. Clark, 30, has had ITDM since 1984. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Terry C. Conwell

Mr. Conwell, 61, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Steven M. French

Mr. French, 42, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. French meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Michigan.

Glennon E. Goetting

Mr. Goetting, 69, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goetting meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

Philip P. Gray

Mr. Gray, 43, has had ITDM since 1996. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Virginia.

John L. Hansen

Mr. Hansen, 44, has had ITDM since 1966. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Darin D. Harries

Mr. Harries, 41, has had ITDM since 1969. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harries meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

William E. Hollowell

Mr. Hollowell, 28, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hollowell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Cindy L. Hushin-Brink

Ms. Hushin-Brink, 52, has had ITDM since 2007. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Hushin-Brink meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2008 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class A CDL from Pennsylvania.

Steven L. Jensen

Mr. Jensen, 28, has had ITDM since 1994. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jensen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to operate any motor vehicle with a gross weight rating of less than 26,001, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

Mark A. Kabriel

Mr. Kabriel, 38, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kabriel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Kansas.

Kevin K. Kimbro

Mr. Kimbro, 29, has had ITDM since 1983. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kimbro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Richard D. Knoche

Mr. Knoche, 45, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knoche meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jonathan D. Koehn

Mr. Koehn, 26, has had ITDM since 1999. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koehn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Robert J. Lanczkowski

Mr. Lanczkowski, 52, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lanczkowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have retinopathy. He holds a Class C operator's license from Maryland.

Terry G. Lindahl

Mr. Lindahl, 51, has had ITDM since 1982. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lindahl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Paula S. Lewis

Ms. Lewis, 53, has had ITDM since 2007. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2008 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from Vermont.

Edward M. Mason

Mr. Mason, 45, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mason meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

John M. McAuliffe

Mr. McAuliffe, 51, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McAuliffe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

John A. McMurray

Mr. McMurray, 51 has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McMurray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Kurt V. Miller

Mr. Miller, 50, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

William W. Moffat

Mr. Moffat, 40, has had ITDM since 1995. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moffat meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Tyree L. Murdock, II.

Mr. Murdock, 50, has had ITDM since 1962. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murdock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Florida.

Edward A. Ortega

Mr. Ortega, 54, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ortega meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a CDL from Washington.

David W. Payne

Mr. Payne, 41, has had ITDM since 1974. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

Richard Rodriguez

Mr. Rodriguez, 54, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Scott D. Schultz

Mr. Schultz, 48, has had ITDM since 1992. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schultz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Daniel S. Sherman

Mr. Sherman, 30, has had ITDM since 1991. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sherman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Marvin R. Shipman

Mr. Shipman, 49, has had ITDM since 1985. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shipman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

Mark W. Seem

Mr. Seem, 57, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seem meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Ricky Sirico

Mr. Sirico, 51, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sirico meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class C operator's license from New York.

Daryl L. Vaughn

Mr. Vaughn, 49, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vaughn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Washington, DC.

Brian K. Wallisch

Mr. Wallisch, 47, has had ITDM since 1984. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wallisch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Tennessee.

Steven S. Whitt, Jr.

Mr. Whitt, 36, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri, which allows him which allows him to operate any motor vehicle with a gross weight rating of less than 26,001, and does not carry hazardous material.

Andrew A. Zizza

Mr. Zizza, 43, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zizza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Mick B. Zoske

Mr. Zoske, 28, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zoske meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the date indicated in the **DATES** section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) required the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: July 30, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–17859 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0073]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TYDAMAR.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0073 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before September 4, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TYDAMAR is:

Intended Use: ''carry passengers.''

Geographic Region: ''Chesapeake Bay & tributaries, Virginia & Maryland.''

Privacy Act

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

Dated: July 29, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–17922 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0071]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SUNNYLAND.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–XXXX at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before September 4, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–XXXX. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SUNNYLAND is:

Intended Use: ''carry passengers.''

Geographic Region: ''Chesapeake Bay & tributaries, Virginia & Maryland.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 29, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–17923 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0074]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HARMONY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–XXXX at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 4, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–XXXX. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HARMONY is:

Intended Use: ''Inland Waterway and Coastwise Sailing Charters.''

Geographic Region: ''Florida.''

Privacy Act

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

Dated: July 29, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–17924 Filed 8–4–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 289X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Hamilton County, OH

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon a 1.10-mile line of railroad between milepost CT 2.50 (Cincinnati) and milepost CT 3.60 (Norwood), in Hamilton County, OH. The line traverses United States Postal Service Zip Codes 45207 and 45212.

NSR has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) overhead traffic on the line, if any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 4, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 15, 2008.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 25, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update,* STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

[3] NSR states that it does not have fee title to the entire right-of-way underlying the line proposed for abandonment and, therefore, that it will not have a contiguous corridor available for public use.

representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 8, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 5, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 28, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17675 Filed 8–4–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 0730a)]

Agency Information Collection (Child Care Subsidy) Activities Under OMB Review

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (VA Form 0730a)'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (VA Form 0730a).''

SUPPLEMENTARY INFORMATION:

Titles:

a. Child Care Subsidy Application Form, VA Form 0730a.

b. Child Care Provider Information (For the Child Care Subsidy Program), VA Form 0730b.

OMB Control Number: 2900–New.

Type of Review: Existing collection in use without an OMB control number.

Abstracts:

a. VA employees complete VA Form 0730a to request participation in VA's child care subsidy program. VA will use the data collected to determine the percentage of monthly cost to be subsidized for child care.

b. VA Form 0730b is completed by the child care provider. The data will be used to determine whether the child care provider is licensed and/or regulated by the state to perform child care.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 14, 2008, at pages 27893–27894.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden:

a. VA Form 0730a—667 hours.

b. VA Form 0730b—333 hours.

Estimated Average Burden per Respondent:

a. VA Form 0730a—20 minutes.

b. VA Form 0730B—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 0730a—2,000.

b. VA Form 0730b—2,000.

Dated: July 29, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17843 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Agency Information Collection (Report of Treatment in Hospital) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0119'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0119.''

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–551 is used collect information from hospitals were a claimant's was treated. VA uses the data to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 19, 2008, at pages 28860–28861.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,277.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17844 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21088)]

Proposed Information Collection (Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care)) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure the quality of service provided to VHA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 6, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–New (10–21088)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Veteran Enrollees Quality and Efficiency of VA Health Care, VA Form 10–21088.

OMB Control Number: 2900–New (10–21088).

Type of Review: New collection.

Abstract: VA Form 10–21088 will be used to collect data that is necessary to promote quality and efficient delivery of health care through the use of health information technology transparency regarding quality, price and better incentives for program beneficiaries, enrollees and providers.

Affected Public: Individuals or Households.

Estimated Annual Burden: 18,133.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,080.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17845 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0618]

Agency Information Collection (Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0618'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0618.''

SUPPLEMENTARY INFORMATION:

Title: Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e)).

OMB Control Number: 2900–0618.

Type of Review: Extension of a currently approved collection.

Abstract: An insured person who is terminally ill may request a portion of the face value of his or her Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) prior to death. If the insured would like to receive a portion of the SGLI or VGLI he or she must submit a Servicemembers' and Veterans' Group Life Insurance Accelerated Benefits Option application. The application must include a medical prognosis by a physician stating the life expectancy of the insured person and a statement by the insured on the amount of accelerated benefit he or she choose to receive. The application is obtainable by writing to the Office of Servicemembers' Group Life Insurance ABO Claim Processing, 290 West Mt. Pleasant Avenue, Livingston, NJ 07039, or calling 1–800–419–1473 or downloading the application via the Internet at *http://www.insurance.va.gov*.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 19, 2008, at page 28860.

Affected Public: Individuals or households.

Estimated Annual Burden: 40 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 200.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17846 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Agency Information Collection (Certificate as to Assets) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0107'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0107.''

SUPPLEMENTARY INFORMATION:

Title: Certificate as to Assets, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: Fiduciaries are required to complete VA Form 21–4709 to report investment in savings, bonds and other securities that he or she received on behalf of beneficiaries who are incompetent or under legal disability. Estate analysts employed by VA use the data collected to verify the fiduciaries accounting of a beneficiary's estate.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 19, 2008, at page 28861.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17847 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection (Claim for One Sum Payment (Government Life Insurance)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0060'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0060.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Claim for One Sum Payment (Government Life Insurance), VA Form 29–4125.

b. Claim for Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

c. Claim for Monthly Payments (United States Government Life Insurance, (USGLI)), VA Form 29–4125k.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: Beneficiaries of deceased veterans must complete VA Form 29–4125 to apply for proceeds of the veteran's Government Insurance policies. If the beneficiary desires monthly installment in lieu of one lump payment he or she must complete VA

Forms 29–4125a and 29–4125k. VA uses the information to determine the claimant's eligibility for payment of insurance proceeds and to process monthly installment payments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 19, 2008, at page 28859.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,787 hours.

a. VA Form 29–4125—8,200 hours.
b. VA Form 29–4125a—462 hours.
c. VA Form 4125k—125 hours.

Estimated Average Burden Per Respondent:

a. VA Form 29–4125—6 minutes.
b. VA Form 29–4125a—15 minutes.
c. VA Form 4125k—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 84,350.

a. VA Form 29–4125—82,000.
b. VA Form 29–4125a—1,850.
c. VA Form 4125k—500.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17848 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0635]

Agency Information Collection (Suspension of Monthly Check) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0635'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0635.''

SUPPLEMENTARY INFORMATION:

Title: Suspension of Monthly Check, VA Form 29–0759.

OMB Control Number: 2900–0635.

Type of Review: Extension of a currently approved collection.

Abstract: When a beneficiary's monthly insurance check is not cash within one year from the issued date, the Department of Treasury returns the funds to VA. VA Form 29–0759 is used to advise the beneficiary that his or her monthly insurance checks have been suspended and to request the beneficiary to provide a current address or if desired a banking institution for direct deposit for monthly checks.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 19, 2008, at pages 28861–28862.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: July 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–17849 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on September 18–19, 2008, in Room 630, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. On September 18, the session will begin at 8:30 a.m. and end at 5 p.m. On September 19, the session will begin at 8 a.m. and end at 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussion on VA's aging research activities, update on VA's geriatric workforce (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) Geriatric Primary Care, VHA strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and long term care needs of recently returning veterans, program advances in Community Living Centers and palliative care, and policy guidance and performance oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee not less than ten days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 461–6769.

Dated: July 30, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–17898 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice; Modification of Routine Uses

AGENCY: Department of Veterans Affairs.

ACTION: Notice; amendment of system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552(a)(E), notice is hereby given that the Department of Veterans Affairs (VA) is modifying the Routine Uses of this System of Records to add additional uses.

Notice is hereby given that VA is revising certain paragraphs in the system of records entitled ''Workers'' Compensation-Occupational Safety and Health/Management Information System—VA'' (86VA00S1) which was recently published in the **Federal Register** at Volume 60, Number 60, on September 14, 2000. The Routine Uses are being revised to include additional purposes for which information from this System of Records may be disseminated without the consent of the individual. VA is republishing this system notice in its entirety at this time.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; by fax to (202) 273–9026; or by e-mail to ''*VAregulations@mail.va.gov.*'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director, Occupational Safety and Health (00S1), Office of Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–461–5021.

SUPPLEMENTARY INFORMATION:

Background: VA developed the ''Workers'' Compensation-Occupational Safety and Health/Management Information System—VA'' to facilitate the management of workers' compensation claims filed under the Federal Employment Compensation Act (FECA) which is administered by the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). The data contained in the system is provided directly from periodic input via CD ROM from OWCP and uploaded into the system for use by VA workers' compensation staff to manage facility actions related to FECA claims.

Approved: July 21, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

SYSTEM NUMBER:

86VA00S1.

SYSTEM NAME:

Workers' Compensation-Occupational Safety and Health/Management Information System—VA.

SYSTEM LOCATION:

Department of Veterans Affairs (VA) Austin Information Technology Center, Austin, Texas, and information in the database can be viewed and downloaded by employees with workers' compensation case management and safety responsibilities at VA employing facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All VA and former VA employees who have incurred a job-related injury/disease and have an active claim file with the Office of Workers' Compensation Programs (OWCP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include the OWCP quarterly injury/disease chargeback reports, weekly Case Management File (CMF) Reports, weekly Automated Compensation Payment System (ACPS) Reports, weekly Bill Payment System (BPS) Reports, data on VA's continuation of pay (COP) costs, and some elements from the Personnel and Accounting Integrated Data System—VA. The computer data base records include the claimant's name, address, Social Security number, date of birth, grade, salary, telephone number, OWCP's case adjudication status (approved or denied, waiting adjudication, file sent to Hearings and Review for decision), accepted medical condition(s), compensation paid (amount and time period covered), medical bills paid (name of physician, hospital or health facility, type of treatment, date of treatment, amount paid, amount paid for medical equipment, and rehabilitation expenses), COP authorized or denied, dates COP is paid, number of days of COP, and total amount paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 91–596; 5 U.S.C. 8101 *et seq.*; and Federal Regulations 20 CFR part 10, 29 CFR part 1960, and 5 CFR ch. 1, part 353.

PURPOSE(S):

The information contained in this system of records is used to case manage each worker's compensation claim, to produce statistical management reports, monitor the case management performance of each VA employing facility, and produce statistical reports on the source and type of injuries occurring at each facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to any third-party or representative acting on claimant's behalf until the claim is adjudicated, all appeal rights are resolved, and the case file is closed.

2. In the event that records in this system of records indicate 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, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

5. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

6. Disclosure may be made to the National Archives and Records

Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29 of the U.S. Code.

7. Disclosure may be made to any source from which additional information is needed in order to properly make case management decisions. Disclosure of statistical data may be made to other VA facilities and Federal agencies.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform the services of the contract or agreement.

9. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

11. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and computer storage media.

RETRIEVABILITY:

Information is retrievable by the name of VA claimant, Social Security number, and OWCP case file number.

SAFEGUARDS:

Access to the WC–OSH/MIS database is restricted to OWCP Case Managers and Safety Officials. Paper records are maintained in a secured area with limited access. Access to data is by means of online (query) database or downloading with a personal computer and is restricted to authorized employees by means of unique user identification and passwords.

RETENTION AND DISPOSAL:

Records are destroyed 30 years after OWCP closes the claimant's case file. Records are destroyed by shredding or burning paper documents, or by erasing the magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Administration (03), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

Employees desiring to know whether this system of records contains a record pertaining to them must submit a written request to VA's Human Resources Management Office of employment or to the office of last employment for former employees.

RECORD ACCESS PROCEDURES:

Employees seeking information regarding access to and contesting of VA records may write, call, or visit VA's Human Resources Management Office of Employment.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORDS SOURCE CATEGORIES:

Data tapes furnished by OWCP, data elements from the Personnel and Accounting Integrated Data System—VA, VA COP data, and VA employees.

[FR Doc. E8–17899 Filed 8–4–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
August 5, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (Ovis canadensis sierrae) and Taxonomic Revision; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0014; 92210–1117–0000–B4]

RIN 1018–AV05

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (Ovis canadensis sierrae) and Taxonomic Revision

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 Sierra Nevada bighorn sheep (*Ovis canadensis sierrae*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 417,577 acres (ac) (168,992 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Tuolumne, Mono, Fresno, Inyo, and Tulare Counties, California. We also are finalizing the revision of taxonomy of the listed entity from a distinct population segment (DPS) of California bighorn sheep (*Ovis canadensis californiana*) to subspecies, *Ovis canadensis sierrae*, based on recent published information.

DATES: This rule becomes effective on September 4, 2008.

ADDRESSES: The final rule, economic analysis, and maps are available at *http://www.regulations.gov* and at *http://www.fws.gov/nevada*. Supporting documentation we used in the preparation of this final rule is available for public inspection, by appointment, during normal business hours, at the Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89523; telephone 775–861–6300; facsimile 775–861–6301.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the Sierra Nevada bighorn sheep, refer to the final listing rule published in the **Federal Register** on January 3, 2000 (65 FR 20) and the proposed critical habitat rule published in the **Federal Register** on July 25, 2007 (72 FR 40955).

The bighorn sheep (*Ovis canadensis*) is a large mammal in the family Bovidae described by Shaw in 1804 (Shackleton 1985, p. 1). Cowan (1940, pp. 519–569) recognized several subspecies based on geography and skull measurements. Recent genetic (Ramey 1993, pp. 62–86; 1995, p. 432–434; Boyce *et al.* 1996, pp. 423–426, 429; Gutierrez-Espeleta *et al.* 1998, pp. 7–9, 11) and morphological data (Wehausen and Ramey 1993, pp. 4–8; 2000, pp. 148–153), and review and reanalysis of Cowan's data (Ramey 1993, p. 83), do not support Cowan's original subspecies differentiations.

Ramey (1993, pp. 71–72; 1995, p. 432) found, based on mitochondrial DNA (mtDNA), bighorn sheep from the Sierra Nevada to be more allied with sheep occupying the adjacent desert area than those to the north. Ramey (1993, pp. 67–68; 1995, pp. 433, 435) also found Sierra Nevada bighorn sheep to be a distinctive group in the desert region extending east to Utah and New Mexico and south to northern Mexico. Ramey (1993 p. 54) used mtDNA as a genetic marker to help understand the evolutionary history of North American mountain sheep. From the 116 individuals included in the surveys, 16 different mtDNA haplotypes were identified in North America and four in Asia (Ramey 1993, p. 62). Two major mtDNA lineages of mountain sheep were indicated in North America (Ramey 1993, p. 63). Within the northern Alaska and western North America clade, three mtDNA lineages were identified (Ramey 1993, p. 72). One lineage included bighorn sheep in the desert ranges of the southwestern United States and Mexico and the Sierra Nevada (Ramey 1993, p. 72), where the Sierra Nevada population was found to be more closely related to the desert-dwelling sheep than those from the Cascade Ranges or Rocky Mountains (Ramey 1993, p. 72). Within the desert-dwelling sheep populations, Sierra Nevada bighorn sheep differed (Ramey 1993, p. 73). Ramey (1995 p. 429) used mtDNA as a genetic marker to help understand the evolutionary history of North American mountain sheep in the southwest United States. Ten mtDNA haplotypes were identified in the southwest, with a common one being found in most populations (Ramey 1995, pp. 431–432). The distribution of mtDNA variants in the southwest did not support the recognition of *O. c. cremnobates, O. c. mexicana*, and *O. c. nelsoni* as distinct and separate subspecies, but the mtDNA analysis did show a unique fixed haplotype for *O. c. californiana* from the Sierra Nevada (Ramey 1995, p. 433). Based on this finding, bighorn sheep from the Sierra Nevada could be distinguished from populations of other subspecies of bighorn sheep (Ramey 1995, p. 433). Results indicated that significant differences in mtDNA haplotype frequencies can be found among populations that are adjacent to one another and separated by short distances (Ramey 1995, p. 435). A few rare haplotypes were limited in distribution and found in only single populations. One of these populations included the Sierra Nevada (Ramey 1995, p. 433).

Wehausen and Ramey (2000, pp. 148–153) used univariate and multivariate statistical methods to examine the geographic variation in horn and skull characters of 694 bighorn sheep (*Ovis canadensis*) from the Great Basin to British Columbia and Alberta. California bighorn sheep (*O. c. californiana*) from Washington and British Columbia were not distinguishable from Rocky Mountain bighorn sheep (*O. c. canadensis*); however, they did differ from Sierra Nevada bighorn sheep populations considered to be *O. c. californiana*. Extirpated populations from northeastern California, Oregon, and southwestern Idaho shared a horn-related character with Nelson bighorn sheep (*O. c. nelsoni*) from the Great Basin; this shared character was different from Rocky Mountain bighorn sheep. Individuals from the Sierra Nevada were distinguishable from bighorn sheep from the Great Basin. These results agree with geographic patterns identified with the mtDNA studies of Ramey (1993, 1995) (Wehausen and Ramey 2000, p. 156). Wehausen and Ramey (2000, pp. 153–157) synonymized the extinct Audubon subspecies, *O. c. auduboni*, from east of the Rocky Mountains in eastern Montana and Wyoming, North Dakota, South Dakota, and western Nebraska with *O. c. canadensis*. They also assigned extinct and extant native populations of *O. c. californiana* from Washington and British Columbia to *O. c. canadensis* and the extinct native populations of *O. c. californiana* from northeastern California, northern Nevada, southwestern Idaho, and Oregon to *O. c. nelsoni* of the Great Basin desert form. Based on genetic and morphometric data, Wehausen and Ramey (2000, p. 156) concluded that bighorn sheep in the Sierra Nevada should be recognized as a separate subspecies of *O. canadensis*, but they

did not recommend a change in nomenclature at that time.

In a recent investigation of the taxonomy of Sierra Nevada bighorn sheep, Wehausen *et al.* (2005) reexamined the history of bighorn sheep nomenclature. Grinnell (1912, p. 144) recognized bighorn sheep from the Sierra Nevada of California as a distinct subspecies, *Ovis cervina* (= *canadensis*) *sierrae*, designating a 5-year-old ram as the type specimen. Cowan (1940, p. 556) did not recognize the subspecies O. c. sierrae as valid, but included animals from the Sierra Nevada as *O. c. californiana*. Wehausen and Ramey (2000, pp. 153–157) reassigned specimens from north of the central Sierra Nevada to *O. c. nelsoni* and *O. c. canadensis*. They kept the name *O. c. californiana* for bighorn sheep in central and southern Sierra Nevada (Wehausen and Ramey 2000, p. 156), raising the question of the correct subspecific name for animals inhabiting this area. Based on this investigation of the taxonomy of Sierra Nevada bighorn sheep and by the Principle of Typification (International Commission on Zoological Nomenclature 1999), cited in Wehausen *et al.* (2005, p. 217), Wehausen *et al.* (2005 p. 217) concluded, based on Grinnell's original type specimen, that the correct nomenclature for native sheep in the central and southern Sierra Nevada of California is *Ovis canadensis sierrae* (Grinnell). Therefore, with the publication of this final rule designating critical habitat for the Sierra Nevada bighorn sheep, we formally revise its taxonomy from DPS of California bighorn sheep (*Ovis canadensis californiana*) to subspecies *Ovis canadensis sierrae*.

Sierra Nevada bighorn sheep inhabit portions of the Sierra Nevada located along the eastern boundary of California in Tuolumne, Mono, Fresno, Inyo, and Tulare Counties. Habitat occurs from the eastern base of the range as low as 4,790 feet (ft) (1,460 meters (m)) to peaks above 14,100 ft (4,300 m) (Wehausen 1980, pp. 3, 82).

Based on recent modeling efforts, discussed further in the Criteria Used To Identify Critical Habitat section, Sierra Nevada bighorn sheep habitat, as well as areas necessary to provide connectivity between winter and summer ranges, occur as low as 4,000 ft (1,219 m) in the southern portion of its range (Johnson *et al.* 2005). Sierra Nevada bighorn sheep inhabit open areas where the land is rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5). Wehausen (1980, pp. 18–25) provides a detailed description of Sierra Nevada bighorn sheep habitat throughout its range. They prefer open ground to better detect predators and allow enough time to reach steep, rocky terrain (escape habitat) (Wehausen 1980, p. 81). Forests and thick brush are usually avoided if possible (65 FR 21; January 3, 2000). Most of the sheep live at higher elevations (10,000–14,000 ft (3,050–4,270 m)) in subalpine and alpine areas during the summer (65 FR 21; January 3, 2000). During winter, these sheep occupy high-elevation, windswept ridges and tend to prefer south-facing slopes where snow melts more readily (Jones 1950, pp. 44–45; McCullough and Schneegas 1966, p. 71; Wehausen 1980, pp. 86–87) or migrate to lower elevations (4,800 ft (1,460 m)) in sagebrush-steppe areas to avoid deep snow and to find forage.

Sierra Nevada bighorn sheep are gregarious, with group size and composition depending on gender and season. Spatial segregation by gender occurs outside of the mating season. Bighorn sheep ewes generally remain with the same band in which they were born (Cowan and Geist 1971, pp. 80–81). Males older than 2 years of age remain apart from females and younger males for most of the year (Jones 1950, p. 50; Cowan and Geist 1971, p. 65; Wehausen 1980, p. 109). During the late fall and winter, the groups come together and concentrate in suitable winter habitat.

Breeding takes place in late fall, generally November and December (Jones 1950, pp. 63–64; Cowan and Geist 1971, p. 64; Wishart 1978, p. 165). Lambing occurs between late April and early July (Wehausen 1996, p. 475) on safe, precipitous, rocky slopes (Wehausen 1980, p. 95); most lambs in the Sierra Nevada are born in May and June (Wehausen 1980, p. 94; 1996, p. 475). Ewes and lambs often occupy steep terrain that provides a diversity of exposures and slopes for escape cover (65 FR 21; January 3, 2000). The lifespan for both Sierra Nevada bighorn sheep males and females has been observed as 8 to 12 years (Wehausen 1980, p. 76; Stephenson 2008, p. 1).

Bighorn sheep are primarily diurnal (Jones 1950, pp. 54–57). They are primarily grazers; however, they may browse woody vegetation at times. Plants consumed include various grasses, browse, and forbs, depending on season and location (Wehausen 1980, pp. 80–93). Naturally occurring and mineral licks provide necessary minerals for bone and muscle growth.

While distribution of bighorn sheep is naturally fragmented on the landscape, the maintenance of migration corridors (space) is important to allow genetic exchange between Sierra Nevada bighorn sheep herds. The population ecology of bighorn sheep has been described as a metapopulation with geographically distinct herds interacting in a network (Schwartz *et al.* 1986, p. 184; Bleich *et al.* 1990, pp. 384–388). The movements of rams between herds can counteract the effects of inbreeding that can develop with small, isolated populations (Schwartz *et al.* 1986, pp. 182–185).

Previous Federal Actions

On April 20, 1999, we published an emergency rule listing the Sierra Nevada DPS of the California bighorn sheep as endangered (64 FR 19300), providing emergency protection to the DPS until such time that we could complete the normal listing process. We also published a proposed rule to list the DPS as endangered on the same date (64 FR 19333). On January 3, 2000, we published a final rule listing the Sierra Nevada bighorn sheep as endangered (65 FR 20). The emergency rule stated that the designation of critical habitat was not determinable due to lack of information sufficient to perform the required analysis of impacts of the designation. In the final listing rule, we stated our revised determination that there is sufficient information to perform the required impact analysis and that the designation of critical habitat is prudent.

During the process of designating critical habitat for the Sierra Nevada bighorn sheep, we noticed that the final listing rule published in 2000 (65 FR 20) inadvertently listed this entity as a DPS rather than as a subspecies. While the listing rule addressed the DPS question, we failed to include the DPS language in the table found in the regulatory section of the rule. However, as stated above, based on the work of Wehausen and Ramey (2000, p. 156) and Wehausen *et al.* (2005, p. 217), the Sierra Nevada bighorn sheep is recognized as a subspecies, and the correct nomenclature is *Ovis canadensis sierrae*. Therefore, we are formally providing a taxonomic revision herein to amend the final listing rule to subspecies *Ovis canadensis sierrae*.

On July 30, 2003, we made available the Service's Draft Recovery Plan for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) (68 FR 44808). On October 9, 2003, we reopened the comment period for the draft Recovery Plan (68 FR 58355). On February 13, 2008, we published a Notice of Availability for the final recovery plan (73 FR 8345).

On December 8, 2005, the Center for Biological Diversity filed a complaint based on the Service's failure to designate critical habitat for this subspecies within the time mandated under the Act (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service, et al.* Case No. 2:05–CB–02492–DFL–KJM). On June 6, 2006, the Service entered into a settlement agreement with the Center for Biological Diversity to submit a proposed critical habitat designation for this subspecies for publication in the **Federal Register** by July 17, 2007, and to submit a final determination on the proposed critical habitat designation for publication by July 17, 2008.

Our proposed critical habitat rule and taxonomic revision for the Sierra Nevada bighorn sheep was published in the **Federal Register** on July 25, 2007 (72 FR 40956). A notice of availability of the draft economic analysis (DEA) of the proposed critical habitat designation was published in the **Federal Register** on February 5, 2008 (73 FR 6684). This final rule satisfies the June 6, 2006, settlement agreement with respect to Sierra Nevada bighorn sheep.

For more information on previous Federal actions concerning Sierra Nevada bighorn sheep, refer to the final listing rule published in the **Federal Register** on January 3, 2000 (65 FR 20).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Sierra Nevada bighorn sheep published on July 25, 2007 (72 FR 40956). The 60-day comment period for the proposed rule closed on September 24, 2007. A request for a comment period extension was received from a private organization on August 20, 2007, and on October 9, 2007, the comment period was reopened until November 23, 2007 (72 FR 57276). A 30-day comment period was opened on the DEA and the proposed rule on February 5, 2008, and closed on March 6, 2008 (73 FR 6684). Comments and new information received in response to the proposed rule and the DEA were incorporated in the final rule as appropriate and summarized below.

During the comment periods for the proposed rule, we received a total of 28,181 (28,153 in support, 12 opposed, and 16 neutral) comments from Federal, State, and local governments, non-governmental organizations and private individuals. We received two requests for public hearings. The Inyo County Board of Supervisors made a request for a public hearing on August 7, 2007, as did two private individuals on August 29, 2007. A public hearing was held in Bishop, California, on October 25, 2007 (72 FR 57276). We received 12 oral testimonies from 12 individuals. Of these commenters, three who provided oral comments also submitted duplicative written comments. A request was made for a public workshop by the Mono County Board of Supervisors on September 5, 2007. We held two public meetings in Bridgeport and Bishop, California, on October 24 and 25, 2007, respectively (72 FR 57276).

Peer Review

In accordance with our policy published July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species and conservation biology principles. We received responses from two peer reviewers. In general, the peer reviewers concurred with our methods and conclusions and provided suggestions to improve the final critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Sierra Nevada bighorn sheep, addressed them in the following summary, and incorporated them into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* Both peer reviewers raised concern that the proposed designation did not adequately protect Sierra Nevada bighorn sheep from the possible introduction of disease from domestic sheep and goats. One suggested that the ''absence of risk of disease transmission'' should be explicitly included as a primary constituent element (PCE) as pneumonia caused by contact with domestic sheep or goats can be an overriding factor affecting habitat suitability.

Our Response: Conservation of the Sierra Nevada bighorn sheep depends on addressing both habitat and non-habitat related threats. In terms of the consultation process under section 7(a)(2) of the Act, the Service is required to analyze both the threats to the individuals within a population and the threats to the PCEs of its designated critical habitat. Under the Special Management Considerations or Protection section, we have indicated that management of domestic livestock grazing practices that result in overgrazing or forage competition between these domestic species and Sierra Nevada bighorn sheep can be a threat. The concern for overgrazing or competition is a habitat-related threat associated with the PCEs (i.e., PCE 2). The potential for contact and the possible transmission of disease to bighorn sheep exists when domestic sheep or goats are present in critical habitat. Management of the threat of disease transmission between domestic sheep and goats and Sierra Nevada bighorn sheep is needed to conserve this species; however, this threat is not strictly a habitat-related threat. The potential effects of disease transmission will be addressed through section 7 consultation with Federal agencies under the jeopardy standard and through the section 9 prohibitions of the Act to the extent applicable. There would be no benefit gained from a critical habitat designation with respect to the effects of disease on individual Sierra Nevada bighorn sheep because the regulatory effects of critical habitat designations apply to adverse modification or destruction of habitat, not to effects that result in the mortality of individual Sierra Nevada bighorn sheep. Because the disease threat faced by the species is not habitat-based, there would be no practical benefit to including it as a PCE.

(2) *Comment:* One peer reviewer suggested that buffer zones be established around designated critical habitat for management of domestic sheep and goats because activities that could pose a risk of disease transmission do not need to occur directly within critical habitat to affect that habitat.

Our Response: The units designated as critical habitat for the Sierra Nevada bighorn sheep contain the features essential for the conservation of this subspecies. It is not our practice to establish buffers around an area designated as critical habitat. As indicated under the Special Management Considerations or Protection section, domestic sheep and goat grazing may require management modifications to protect Sierra Nevada bighorn sheep in critical habitat in certain units. Any buffer distance recommended or suggested in a Federally proposed action involving domestic sheep or goat grazing adjacent to a designated critical habitat unit to reduce the potential threat of disease transmission to Sierra Nevada bighorn sheep would be taken into consideration during the jeopardy analysis of the consultation process under section 7 of the Act.

(3) *Comment:* One peer reviewer raised concern for an elevated risk of disease transmission with domestic sheep grazing on U.S. Forest Service

(USFS) lands as Sierra Nevada bighorn sheep wander between units.

Our Response: We are aware of the potential risk of disease transmission due to contact between domestic sheep (and goats) and Sierra Nevada bighorn sheep. If a disease outbreak were to occur in a Sierra Nevada bighorn sheep population, it could be passed to other populations (units) because of, most likely, ram forays. This risk will increase if Sierra Nevada bighorn sheep numbers increase as expected due to continuing recovery actions. While we believe that this is an issue of management concern, we do not believe that this critical habitat designation necessarily affects the issue in any significant way. Please also see our response to comment (1).

(4) *Comment:* Both peer reviewers raised concern that the proposed critical habitat designation did not provide biologically based corridors or linkage zones for movements among Sierra Nevada bighorn sheep subpopulations. They were unclear how genetic exchange or colonization would be allowed with unconnected units of critical habitat.

Our Response: Connectivity, within a critical habitat unit, is a PCE for the Sierra Nevada bighorn sheep (i.e., PCE 1). The current critical habitat configuration provides for long-term connectivity between groups within a particular unit. We recognize the importance of migration between critical habitat units, as discussed under Metapopulaton Structure in the Space for Individual and Population Growth and for Normal Behavior section. However, due to the current isolation of occupied herd units and extremely limited knowledge of various migration paths that Sierra Nevada bighorn sheep, especially rams, may have taken historically between units, we did not develop criteria that would capture migration corridors between units.

(5) *Comment:* One peer reviewer was concerned about the fine-scale mapping resulting in ''finger-like'' habitats for Units 1, 2, 3, 4, and 9. The concern was related to possible difficulties in managing such areas. The reviewer suggested the boundaries be redrawn to reduce sinuosity, possibly along watershed and or drainage boundaries.

Our Response: The critical habitat units have been developed to be consistent with the herd units that the Sierra Nevada bighorn recovery plan identifies as essential for recovery of the subspecies. Those herd units were originally developed using expert opinion and information on current and historical bighorn sheep locations in the Sierra Nevada. Those units were later refined using a habitat selection model developed by University of California Davis and the California Department of Fish and Game (CDFG) (Johnson *et al.* 2005). Based on our analysis of the biological needs of the subspecies, we believe that the herd units developed for the recovery plan capture those areas that contain the physical and biological features arranged in the appropriate quantity and spatial arrangement for the conservation of the subspecies.

It is important to remember that these critical habitat units are not being established as Sierra Nevada bighorn sheep preserves or management zones. These are regulatory designations of areas that contain the features essential to the conservation of the subspecies. Critical habitat would serve its regulatory role when analyzing a particular Federal action in the consultation process under section 7(a)(2) of the Act to determine if that action would adversely modify or destroy critical habitat by impacting the essential features within that unit to such a degree that the unit no longer serves its function for conservation.

It is possible that a Federal action immediately adjacent to these units (e.g., between ''fingers'') could indirectly adversely modify critical habitat within the units. In such a situation, the action would be analyzed through the consultation process under section 7(a)(2) of the Act against the adverse modification standard. However, because our analysis has not identified essential features in these locations, unit boundary modification and designation of critical habitat therein would not be appropriate.

(6) *Comment:* One peer reviewer commented that the indicated 9 to 11 year lifespan for bighorn sheep seemed short.

Our Response: We have modified the Background section of the final rule to more accurately reflect the observed lifespan for male and female bighorn sheep in the Sierra Nevada.

Comments From State Agencies

(7) *Comment:* California Department of Fish and Game (CDFG) suggested a PCE that identifies a ''disease-free zone'' because of the risk to Sierra Nevada bighorn sheep in proximity to domestic sheep.

Our Response: Please see our response to Comment 1.

(8) *Comment:* CDFG recommended establishment of a buffer that excludes domestic sheep to ensure the integrity of the critical habitat for Sierra Nevada bighorn sheep and provide additional protections.

Our Response: Please see our response to Comment 2.

(9) *Comment:* CDFG recommended more emphasis be placed on the use of fire to maintain critical habitat because fire is an integral part of the landscape.

Our Response: The Special Management Considerations or Protection section identifies activities of Federal agencies or those with a federal nexus that may impact Sierra Nevada bighorn sheep and their habitat. The section is not meant to promote or discourage any particular activity. We indicated that it may be necessary in some of the critical habitat units to reduce forest cover to make habitat more suitable for Sierra Nevada bighorn sheep. Prescribed fire can be used as a tool to do this. Johnson *et al.* (2005, p. 34) indicate Sierra Nevada bighorn sheep could gain additional habitat with a reduction in forest cover. In addition, the final recovery plan (Appendix H, Genetic Management of Sierra Nevada Bighorn Sheep) provides a specific recommendation to use fire in addition to other methods to enhance habitat within herd units (Service 2007, p. 174). This would improve unit carrying capacity, as well as connectivity with adjacent herd units, providing better opportunities for genetic exchange between herds.

(10) *Comment:* California Department of Food & Agriculture (CDFA) commented that there is ''still incomplete agreement in the scientific community'' about disease transmission from domestic sheep to bighorn sheep, in general, such as how often it occurs and its role in disease epizootics in bighorn sheep. The CDFA agrees that a reasonable approach is to keep the two species separated. How such separation occurs and what measures are used to prevent possible contact are important to both the survival of Sierra Nevada bighorn sheep and the domestic sheep industry in Inyo and Mono Counties, California. The CDFA commented that further scientific findings will improve understanding of the true nature of respiratory disease in bighorn sheep, in general, and that interested parties should cooperate on common interests. They also noted that at the 111th Annual Meeting of the United States Animal Health Association (USAHA) in October 2007, a joint resolution passed recommending additional research and formation of a subcommittee. The College of Agriculture, Biotechnology and Natural Resources at the University of Nevada Reno (UNR) similarly mentions the USAHA resolution.

Our Response: We are aware that disagreement continues regarding the potential for disease transmission to

occur between domestic livestock, especially sheep and goats, and bighorn sheep, in general, under range conditions. We have reviewed Resolution No. 15 that reads, ''The United States Animal Health Association (USAHA) urges the United States Secretary of Agriculture and the United States Secretary of the Interior to seek resources through the President's budget to fund research to better elucidate the epidemiology and pathogenesis of bighorn/domestic sheep disease interactions so informed and effective management decisions can be made.'' We, along with others, continue to seek answers to questions related to this disease transmission issue. We support continuing research efforts to address uncertainties and to assist in the decision-making process.

(11) *Comment:* The CDFA recommends consideration of the Western Association of Fish and Wildlife Agencies' (WAFWA) document, ''Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat'', dated June 21, 2007, and the University of California—Davis' ''Quantifying the Risk of Disease Transmission from Domestic Sheep to Bighorn Sheep in the Sierra Nevada'' in future determinations of effectively preventing the possibility of disease transmission between domestic sheep and Sierra Nevada bighorn sheep, in addition to working with livestock industry representatives.

Our Response: We are aware of these documents and consider information contained within them during section 7 consultations, as appropriate. Other documents also support the effective separation of domestic sheep from bighorn sheep, in general, as a management tool to reduce the risk of contact and possible disease transmission (Wyoming State-wide Bighorn/Domestic Sheep Working Group 2004, pp. 7, 11; U.S. Forest Service 2006, pp. 18–19). Also, an expert science panel (U.S. Geological Survey and Bureau of Reclamation 2006) was convened in 2006 to discuss a risk analysis of disease transmission between domestic and bighorn sheep on the Payette National Forest in Idaho. The panel focused on science-based concerns raised by the risk analysis document, specifically the disease/mortality category, and developed six statements. References to concerns about domestic sheep also apply to domestic goats. Three of these key statements follow: ''(1a) Scientific observation and field studies demonstrate that ''contact'' between domestic sheep and bighorn sheep is possible under range conditions. This contact increases risk of subsequent bighorn sheep mortality and reduced recruitment, primarily due to respiratory disease; (1b) The complete range of mechanisms/causal agents that lead to epizootic disease events cannot be conclusively proven at this point; and (1c) Given the previous two statements, it is prudent to undertake management to prevent contact between these species'' (U.S. Geological Survey and Bureau of Reclamation 2006, p. 1). One panelist dissented and preferred ''can increase risk'' in statement 1a because it did not imply that any contact will result in disease transmission (U.S. Geological Survey and Bureau of Reclamation 2006, p. 1).

(12) *Comment:* The California Department of Transportation (CalTrans) states that roads are inconsistently addressed and that it is inappropriate to include state highway right-of-ways (ROWs) and facilities within critical habitat. It is recommended by CalTrans that State Route (SR) 120 in Unit 1 and SR 158 in Unit 2 be excluded from critical habitat.

Our Response: When determining critical habitat boundaries for Sierra Nevada bighorn sheep, we made every effort to avoid including developed areas such as lands covered by buildings, paved areas, and other structures that lack PCEs for the Sierra Nevada bighorn sheep. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such features and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or PCEs in adjacent critical habitat.

We have determined, however, that the unpaved road right-of-ways of SR 120 from Unit 1 and SR 158 from Unit 2 do contain the features essential to the conservation of the Sierra Nevada bighorn sheep, and therefore meet the definition of critical habitat. CalTrans did not provide, nor are we aware of any additional information of the benefits of excluding ROWs based on ongoing or planned management of these ROWs, or how any on-going or planned management of the ROWs would benefit the conservation of the Sierra Nevada bighorn sheep or the sheep itself.

The Secretary may exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned.

Because we are not aware of any information describing the benefits of excluding ROWs based on ongoing or planned management of these ROWs, or how any existing or planned management provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act, we have determined that exclusion of these lands from the final designation of critical habitat pursuant to section 4(b)(2) of the Act is not appropriate at this time.

(13) *Comment:* CalTrans states that no bighorn sheep collisions with vehicles are listed in their accident database. This is contrary to a statement made in our proposed rule that a bighorn sheep collision with a vehicle had occurred in the past.

Our Response: A CDFG employee was made aware of the collision we referenced in the proposed rule (72 FR 40956) through a third party. The employee contacted the motorist to obtain information about the November 2003 collision. The Sierra Nevada bighorn sheep ram was monitored after the collision by CDFG, and it subsequently died in January 2004. No formal report was made by CDFG to CalTrans (Stephenson 2008, p. 1).

(14) *Comment:* CalTrans indicates references to SR 190 should be corrected as SR 190 does not occur in or adjacent to critical habitat.

Our Response: We erroneously indicated SR 190 occurred in or adjacent to Unit 10 in the Proposed Critical Habitat Designation and the Special Management Considerations or Protection sections. The road should have been indicated as Forest Route 16S02. This has been corrected in both sections.

(15) *Comment:* CalTrans states that, although an alignment has not been selected for the proposed Olancha/Cartago U.S. 395 project, an alternative might occur on the west side of Los Angeles aqueduct.

Our Response: We appreciate this information. If the location for this new road construction occurs within designated critical habitat or may impact the Sierra Nevada bighorn sheep or its designated critical habitat, consultation under section 7 of the Act will occur as appropriate.

(16) *Comment:* The Nevada Department of Agriculture (NDOA) stated that the disease transmission risk assessment model by Clifford *et al.* (2007) is ''questionable'' as a tool for management and is a problem when serving as the basis of a critical habitat designation. The College of Agriculture, Biotechnology and Natural Resources at the University of Nevada Reno (UNR) similarly recommends that the disease risk assessment by Clifford *et al.* (2007) should not be used as the basis for designating Sierra Nevada bighorn sheep critical habitat.

Our Response: We agree. Critical habitat as defined in section 3 of the Act is; the specific areas within the geographical area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Designation of critical habitat is not based on a single management issue and, in this case, the concern for transmission of diseases from the grazing of domestic sheep or goats in proximity to Sierra Nevada bighorn sheep did not serve as the foundation for this critical habitat designation. Domestic sheep grazing is a management issue that is properly addressed through the consultation process under section 7(a)(2) of the Act.

(17) *Comment:* The NDOA recommended that the critical habitat designation be suspended until the scientific basis has been established for disease transmission between domestic sheep and Sierra Nevada bighorn sheep.

Our Response: We are designating critical habitat for Sierra Nevada bighorn sheep in accordance with the deadlines established by a court-approved settlement agreement. We agreed to submit to the **Federal Register** a final determination of critical habitat for Sierra Nevada bighorn sheep by July 17, 2008. We based our designation of critical habitat on the best scientific and commercial data available as required by Section 4 of the Act. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. We used published scientific literature and the expertise of Recovery Team members (including scientists from a variety of federal and state agencies, and other publics). We also solicited peer review from individuals familiar with bighorn sheep, in general, and related issues. We solicited new biological data, invited public participation during multiple comment periods, conducted a public hearing, and held informational meetings on the proposed rule. We have considered peer review, agency, and public comments received during the preparation of this final rule. Accordingly, we have used the best scientific and commercial information available in this designation. Designation of critical habitat is not based on a single management issue and, in this case, the concern for transmission of diseases from the grazing of domestic sheep or goats in proximity to Sierra Nevada bighorn sheep did not serve as the foundation for this critical habitat designation.

(18) *Comment:* The NDOA stated that uncertainties in general about bighorn sheep epizootics exist per the USAHA meeting in October 2007.

Our Response: Please see our response to Comment 10.

(19) *Comment:* The NDOA stated that the occurrence of bighorn sheep disease and die-offs can be associated with bighorn sheep reaching peak numbers (Monello *et al.* 2001). Stagnant bighorn sheep population numbers have occurred in association with predation by wolves and mountain lions. These factors affect bighorn sheep populations ''permanently,'' not just ''temporarily'' like domestic sheep grazing.

Our Response: Bighorn sheep mortalities can be attributed to various factors as discussed below in the ''Mortality Factors'' section of this rule. These mortality factors may or may not affect bighorn sheep populations ''permanently,'' depending on numerous variables. Die-offs from diseases possibly transmitted from domestic sheep can have long-lasting effects by influencing subsequent population recruitment. Lambs born to surviving ewes can experience low survival rates for 3 to 5 years after the initial outbreak (Foreyt 1990, p. 100; Coggins and Matthews 1992; Ward *et al.* 1992; Foreyt 1995; Hunter 1995a, as cited in Schommer and Woolever 2001, p. 3). We have added a short discussion in the Physical and Biological Features section related to these long-lasting impacts of pneumonia in bighorn sheep populations.

(20) *Comment:* The NDOA and UNR stated that climate and geographical factors play a role in the recovery of a species and that the ''northern recovery unit'' is neither suitable nor essential habitat in terms of winter range for the Sierra Nevada bighorn sheep due to its higher elevation and greater snow depths than more southern units.

Our Response: As indicated in the Criteria Used to Identify Critical Habitat section, we used the following criteria to select areas occupied by the Sierra Nevada bighorn sheep at the time of listing for inclusion in critical habitat:

(a) Those areas occupied by the Sierra Nevada bighorn sheep at the time of listing (1999–2000) as indicated in the final listing rule (65 FR 20; January 3, 2000). In the final listing rule, we identified five subpopulations of Sierra Nevada bighorn sheep that existed: (1) Lee Vining Canyon (Mount Warren and Mount Gibbs Herd Units), (2) Wheeler Crest (Wheeler Ridge Herd Unit), (3) Mount Baxter (Sawmill Canyon and Mount Baxter Herd Units), (4) Mount Williamson (Mount Williamson Herd Unit), and (5) Mount Langley (Mount Langley Herd Unit) in Mono and Inyo counties, California (Wehausen 1999, pp. 1–7; 2000, pp. 1–6);

(b) Areas that are representative of the distribution of the Sierra Nevada bighorn sheep throughout the geographical range occupied at the time of listing with the goal of maintaining the subspecies' range of habitat and genetic variability; and

(c) Areas that allow for the continued existence of viable subpopulations under varying environmental conditions and that can serve as locations for source populations. The locations of all five subpopulations identified in the original listing rule continue to remain occupied today.

We have determined that the areas occupied at the time of listing continue to be occupied, contain features essential to the conservation of the subspecies (possess one or more PCEs such that the area supports one or more of the Sierra Nevada bighorn sheep's life processes) that may require special management, and provide sufficient habitat to protect these populations. Units 1 (Mount Warren) and 2 (Mount Gibbs) of the northern recovery unit meet these criteria.

More specifically, essential habitat is available for Sierra Nevada bighorn sheep in Units 1 (Mount Warren) and 2 (Mount Gibbs). This is not only based on historical data indicating their presence as far north as Sonora Pass (Grinnell and Storer 1924, as cited in Service 2007, p. 14), but also on the fact that these units also currently support

Sierra Nevada bighorn sheep herds. Mount Warren has a population of approximately 26 individuals, and Mount Gibbs has a population of approximately 8 individuals (Wehausen and Stephenson 2006, p. 7). The Mount Gibbs herd spends almost the entire year at elevations above 11,000 ft (3,353 m). In 2007, all ewes gave birth, and their lambs are known to have survived through at least September. This herd continues to survive and reproduce, expanding in numbers, although this alpine environment is no doubt harsher than lower-elevation areas. It is expected this herd will outgrow its carrying capacity of the alpine winter ranges and begin using lower-elevation winter ranges in the future (California Department of Fish and Game 2007, p. 2). Surveys (ground and aerial observations) of the Mount Warren herd conducted during the period from 2003 to 2007 indicate individuals are using this unit during every month of the year (California Department of Fish and Game files—monthly reports, Service files). In addition, a Resource Selection Probability Functions model was developed for summer and winter habitat and indicates an estimated 20.2 square kilometers (sq km) (7.8 square miles (sq mi)) and 9.4 sq km (3.6 sq mi), respectively, are available for Sierra Nevada bighorn sheep in the Mount Gibbs and Mount Warren units (Johnson *et al.* 2005, p. 31). As discussed under the Primary Constituent Elements for Sierra Nevada Bighorn Sheep section of this rule, not all life history functions require all the PCEs, therefore, not all areas designated as critical habitat contain all of the PCEs. Units are designated based on sufficient PCEs being present to support one or more of the subspecies' life history requirements. This applies to both the occupied and unoccupied units designated.

(21) *Comment:* The NDOA and UNR noted that a memorandum to the Director of the Service from the U.S. Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks, dated April 28, 2004, stated that critical habitat adds little additional conservation benefit to a listed species and designations must not be based on speculation or determinations that lack supporting data. Therefore, the designation of critical habitat is of ''dubious value'' as identified by your own agency.

Our Response: Section 4(A)(3) of the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species and that can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and essential areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on discretionary actions that may affect critical habitat and must avoid the destruction or adverse modification of critical habitat. Federal agencies must also consult with us on discretionary actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: The jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This may, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects.

(22) *Comment:* The NDOA states that listing of Sierra Nevada bighorn sheep as an endangered species, subspecies, or even distinct metapopulation lacks scientific merit.

Our Response: Please refer to our final rule listing the Sierra Nevada bighorn sheep published on January 3, 2000 (65 FR 20), which outlines our rationale for listing.

(23) *Comment:* The UNR stated designating critical habitat for Sierra Nevada bighorn sheep will lead to grazing allotment closures.

Our Response: The designation of critical habitat for Sierra Nevada bighorn sheep does not automatically lead to closing allotments. For those areas on Federal lands, consultation under section 7 of the Act may be required to examine the effects of grazing on critical habitat. Specific actions by the managing Federal agency could include the elimination of, or restrictions on, livestock grazing in areas that overlap with critical habitat. Please also see our responses to Comments 24, 40, 41, and 42.

(24) *Comment:* UNR states that short-term, high intensity grazing by domestic sheep helps maintain forage production and fuel load accumulation. The regrowth of vegetation is more palatable and nutritious for Sierra Nevada bighorn sheep during the growing season as well as during winter. The removal of domestic sheep will lead to poorer forage production and an accumulation of fuels.

Our Response: Regardless of any effects of grazing on fuel loads and forage quantity and quality, domestic sheep in some locations may pose a disease risk to Sierra Nevada bighorn sheep. The Service will recommend the removal of domestic sheep from allotments where contact with Sierra Nevada bighorn sheep cannot be prevented through section 7 of the Act. The Service has proposed actions in the recovery plan for Sierra Nevada bighorn sheep to maintain and enhance the

integrity of habitat through the careful use of fire and other habitat manipulations that do not involve domestic sheep grazing. These actions would include maintenance and enhancement of habitat in areas where domestic sheep may be removed to prevent contact with Sierra Nevada bighorn sheep.

Comments From Other Federal Agencies

(25) *Comment:* Yosemite National Park raised a concern about any reduction in the proposed critical habitat and protection of the Sierra Nevada bighorn sheep in the ''northern recovery units'' which would constitute the ''Yosemite herd.'' Sierra Nevada bighorn sheep in the northern areas are the ones most likely to reoccupy habitat in Yosemite, filling an ecological void and offering park visitors the opportunity to observe these animals.

Our Response: We have not reduced the area of designated critical habitat for the two units (Mount Warren and Mount Gibbs) that occur within the northern recovery unit because they meet our criteria for identifying critical habitat. These units contain the features essential to the conservation of the Sierra Nevada bighorn sheep and require special management. We also did not identify any areas within these units where the benefits of exclusion outweighed the benefits of inclusion. Please also see our response to Comment 20.

(26) *Comment:* Yosemite National Park supports the proposed critical habitat designation and taxonomic revision but recommends expanding critical habitat to cover all areas currently occupied by Sierra Nevada bighorn sheep, accommodate further range expansion, and provide buffers between domestic sheep and Sierra Nevada bighorn sheep to prevent disease transmission.

Our Response: As indicated in our response to Comment 2, it is not our practice to establish buffers around an area designated as critical habitat. A buffer distance indicated in a Federally proposed action involving domestic sheep or goat grazing near designated critical habitat would be considered during the consultation process under section 7 of the Act. As indicated in our response to Comment 36, critical habitat should not include the entire area that can be occupied by the species. We based our designation on the Recovery Team's delineation of essential habitat and as indicated in our final approved recovery plan (Service 2007, p. 41). For a more thorough discussion of these topics, please see our responses to Comments 2 and 36.

(27) *Comment:* Sequoia and Kings Canyon National Parks indicated their commitment to preserving and restoring natural ecosystems. They view Sierra Nevada bighorn sheep as an essential component that has been lost from much of its historical range within the Parks. By policy and law there is a commitment to working with the Service and other agencies to help restore the Sierra Nevada bighorn sheep to their former range and abundance. Sequoia and Kings Canyon National Parks fully support the proposed critical habitat designation.

Our Response: We appreciate the support and look forward to continuing to work with the National Park Service and others to conserve the Sierra Nevada bighorn sheep.

(28) *Comment:* The USFS suggested that designating critical habitat does not provide any additional benefit to a species and that it unnecessarily adds to USFS workload and may lead to re-initiation of section 7 consultation for critical habitat where a consultation has already been completed.

Our Response: Designating critical habitat identifies those areas that contain the features that are essential to the conservation of a particular species, thus signaling to Federal agencies to consider the species' conservation in the design and implementation of their management actions. The designation provides guidance on why these areas need special management considerations or protection and indicates activities that are likely to adversely modify or destroy critical habitat. The designation of critical habitat assists the recovery process by providing information on how actions might impact the species' habitat. Including USFS lands as critical habitat is significant because this will assist in maintaining the Service's role in reviewing potential future impacts to areas that are important for the conservation of Sierra Nevada bighorn sheep populations. Lands administered by the USFS contain a substantial portion of habitat that is essential for the conservation of Sierra Nevada bighorn sheep. Designation of critical habitat may also provide protection for unoccupied habitat that may not otherwise undergo the section 7 consultation process due to species' absence. Considering whether proposed future projects will result in the destruction or adverse modification of critical habitat in addition to the jeopardy analysis will require some additional analysis during the section 7 consultation process.

(29) *Comment:* The USFS indicated the 2001 Record of Decision for the Ansel Adams, John Muir, and Dinky Lakes Wilderness Plans considered various impacts on Sierra Nevada bighorn sheep and their habitats.

Our Response: We appreciate this information and have reviewed this document. Only one item was found directly related to management of the Sierra Nevada bighorn sheep. This addressed the closure of Sierra Nevada bighorn sheep habitat to dogs. As indicated in the Special Management Considerations or Protection section, dogs (with their associated recreation activities) are a potential threat to Sierra Nevada bighorn sheep critical habitat. At issue are the effects of Wilderness Plans, associated Forest Land and Resource Management Plans, and ongoing activities on USFS lands on federally listed species, including the Sierra Nevada bighorn sheep. The goal of these plans is to describe a strategic direction for the management of the wilderness areas over a long period of time (15–20 years). The plans do not make any decisions regarding USFS site-specific project proposals for implementing the land management plans nor do they require managers to implement any specific conservation activities.

(30) *Comment:* The USFS stated that management direction was established to restrict dogs in Sierra Nevada bighorn sheep habitat located in the Mt. Baxter and Mt. Williamson California Bighorn Sheep Zoological Areas on the Inyo National Forest.

Our Response: Please see our response to Comment 29. These statements also apply to FS Order No. 04–81–3 which established these zoological areas in 1981.

(31) *Comment:* The USFS commented that the proposed critical habitat designation does not establish migration corridors between the units though migration is identified as important. While paths that rams may take between units or groups may be unpredictable, the final designation would be strengthened if it were to identify dispersal and movement corridors that are integral to the habitat elements.

Our Response: Please see our response to Comment 4.

(32) *Comment:* The USFS requests clarification on why disease transmission from domestic livestock grazing is included as a stochastic event.

Our Response: This has been corrected. We have removed those references specifically identifying the risk of disease transmission from domestic livestock from (3) of the Criteria Used To Identify Critical

Habitat section. The remaining reference addresses various diseases of North American wild sheep.

(33) *Comment:* The USFS suggested that the proposal is not as clear as it should be regarding the effects of disease transmission on Sierra Nevada bighorn sheep populations. Incorporating disease-associated risks into a PCE would strengthen the proposal.

Our Response: We have added some additional information in the biological background of the Primary Constituent Elements section of this rule. Please also see our response to Comment 1.

(34) *Comment:* The USFS stated that while it is important to decrease the degree of habitat fragmentation in the Sierra Nevada, the designation of critical habitat does not actually do that.

Our Response: Designation of critical habitat offers protection from various impacts which may be proposed on the landscape. We believe designating critical habitat in 12 units ranging from 22,037 ac (8,918 ha) to 80,966 ac (32,766 ha) does reduce potential habitat fragmentation. Providing protections for currently unoccupied areas that decrease the distances between occupied areas also assists in reducing habitat fragmentation. The protection of these unoccupied habitats will allow for future establishment of herds in these habitats through translocation or natural colonization, which will help to increase gene flow between populations. The ability to establish and maintain regular gene flow between populations of Sierra Nevada bighorn sheep is essential to their recovery. Reducing habitat fragmentation through protection of these currently unoccupied habitats under a critical habitat designation is essential to the subspecies' conservation.

(35) *Comment:* The USFS recommended that the section discussing wildfire be clarified to resolve apparent contradictions identifying which management actions and stochastic events are considered potentially beneficial or detrimental to critical habitat.

Our Response: Fires can have beneficial, as well as detrimental, effects depending on the situation including location, severity, and extent. As indicated in the Special Management Considerations or Protection section, management actions such as the suppression of wildfires over the past decades has allowed for encroachment of forested habitat into Sierra Nevada bighorn sheep habitat. This has been detrimental to the Sierra Nevada bighorn sheep by increasing habitat for predator concealment. Management actions such as prescribed fires are carried out in a planned, controlled manner in a specific area and can be beneficial to Sierra Nevada bighorn sheep by reducing selected forested habitat that can conceal predators. Stochastic events such as wildfires can be beneficial or detrimental. For example, in July 2007, lightning sparked fires in Sierra Nevada bighorn sheep habitat in the Mount Baxter herd unit. The Seven Oaks Fire burned the majority of the low elevation winter range [<8,000 ft (2438 m)] (California Department of Fish and Game 2007, p. 5). The fire may benefit Sierrra Nevada bighorn sheep by opening up forested areas. The fire also scorched the above ground vegetation. With appropriate moisture levels gained over the winter, sufficient forage may become available. The CDFG personnel intend to evaluate the effects of this fire on forage availability and quality and habitat selection by Sierra Nevada bighorn sheep in this area (California Department of Fish and Game 2007, p. 6).

(36) *Comment:* The USFS mentioned that the Mount Warren unit may not extend northward enough to encompass currently occupied habitat as a few Sierra Nevada bighorn sheep have occurred in the northern areas.

Our Response: According to 16 U.S.C. 1532(5)(C), ''critical habitat should not include the entire geographic area that can be occupied by the threatened or endangered species'' absent a finding of exceptional circumstances by the Secretary of the Interior. We based our critical habitat designation on the Recovery Team's delineation of essential habitat and as indicated in our final approved recovery plan (Service 2007, p. 41). The Recovery Team did not include all areas that have documented historical and current use by Sierra Nevada bighorn sheep, but only those areas regarded as essential for the recovery of the Sierra Nevada bighorn sheep. We used the Recovery Plan to assist in the preparation of the proposed and final critical habitat designations. Integration of these processes strengthens the scientific basis and minimizes the potential discrepancies between the two. Please refer to the final recovery plan for a more detailed discussion of the recovery strategy. The basis for the critical habitat delineation is described in the Criteria Used to Identify Critical Habitat section of this rule. We did not include the areas to the north of Mount Warren or the Bubbs Creek area as critical habitat as these areas did not meet our criteria for inclusion as critical habitat for Sierra Nevada bighorn sheep. Not including these areas within the critical habitat designation does not preclude the continued occupancy or expansion of Sierra Nevada bighorn sheep into these areas. We believe the units designated as critical habitat contain sufficient PCEs to support the behaviors we have determined are essential for the conservation of the subspecies and population criteria as identified in the final recovery plan. Therefore, we have not included these additional areas as critical habitat in the final rule.

(37) *Comment:* The USFS stated there appear to be some biological contradictions among units that were included and those that were ''excluded'' in the critical habitat designation. For example, the Bubbs Creek Herd Unit is currently occupied yet is excluded; and the Mount Warren area does not provide access to low elevation winter range yet is included.

Our Response: No areas were excluded from the final critical habitat designation. We did not designate four herd units that were mentioned in the Sierra Nevada bighorn sheep final recovery plan as they were not considered essential in the plan. Please refer to the Criteria Used to Identify Critical Habitat section for our detailed rationale for not designating these areas. Please also refer to our responses to Comments 36 and 50.

(38) *Comment:* The USFS suggested that the ramifications of global climate change be considered in the proposal.

Our Response: As indicated in the final recovery plan (Service 2007, p. 41), two northern herd units, Mount Warren and Mount Gibbs, are included as essential to the conservation of the Sierra Nevada bighorn sheep, in part, to protect this subspecies and its habitat across a range of latitudes. Climate change may induce ecological changes in the essential herd units in the south. Populations in the northern latitudes can help guard the rangewide population against loss of populations in areas that occur further south.

General Comments

Comments Related to Designation and Sierra Nevada Bighorn Sheep Biology and Management

(39) *Comment:* A few commenters stated concern for the areas of overlap between proposed critical habitat and Federal domestic sheep grazing allotments. The commenter requested that these areas of overlap (six areas with an estimated 1,000 ac (405 ha) be excluded from the critical habitat designation. If these areas are not excluded, the commenter requested specific justification and evaluation of

the habitat including what contribution these areas make to Sierra Nevada bighorn sheep and why their elimination would be detrimental to recovery efforts.

Our Response: We have determined that there are seven areas of overlap between designated critical habitat and Federal domestic sheep grazing allotments [Bureau of Land Management (BLM) or USFS], not six as the commenter stated. These allotments include: (1) Dunderberg; (2) Copper Mountain; (3) Bloody Canyon; (4) McGee; (5) Sherwin; (6) Round Mountain; and (7) Rock Creek-Hilton Unit. The overlap areas total approximately 2,209 ac (894 ha). At the time critical habitat was proposed, all of these allotments were considered vacant, inactive, or unalloted with the exception of the Rock Creek-Hilton Unit. The Rock Creek-Hilton Unit is the only active domestic sheep grazing allotment that overlaps with designated critical habitat. This overlap is 0.9 ac (0.4 ha).

In our proposed rule and this final rule, we included domestic livestock grazing as a threat to the essential features that may need special management considerations or protection within designated critical habitat units. Consultation under the Act by Federal agencies may be necessary if proposed actions may adversely affect the Sierra Nevada bighorn sheep or its critical habitat. We have determined that all seven overlap areas are essential to the Sierra Nevada bighorn sheep because they contain the features essential to the conservation of the subspecies and meet the definition of critical habitat. Please see the Criteria Used To Identify Critical Habitat section for more information. One of our objectives is to provide consistency between critical habitat designation and the essential habitat indicated in the final recovery plan (Service 2007, p. 41).

The Secretary may exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impacts if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned.

We have previously consulted with the USFS on grazing issues in Units 1, 2, and 4 and have determined that those activities were either not likely to adversely affect the Sierra Nevada bighorn sheep or were not likely to jeopardize the continued existence of the subspecies. Since critical habitat has not been previously proposed or designated for this subspecies, it is anticipated that Federal agencies will initiate section 7 consultation as appropriate, for any activities that may affect Sierra Nevada bighorn sheep or its critical habitat. These consultations would include an analysis of destruction or adverse modification of critical habitat as well as a jeopardy analysis. Considering whether proposed future projects will result in the destruction or adverse modification of critical habitat in addition to the jeopardy analysis will require some additional analysis during the section 7 consultation process. We do not believe that the additional analysis to determine whether an action will result in the destruction or adverse modification of critical habitat constitutes a substantial burden.

According to the final EA, post-designation baseline costs for grazing are estimated at $12.5 million (undiscounted) over the next 20 years, $9.6 million applying a 3 percent discount rate, or $7.1 million applying a 7 percent discount rate. Post-designation incremental costs for grazing consultations are estimated to be $97,600 (undiscounted) over the next 20 years, $74,800 applying a 3 percent discount rate, or $55,300 using a 7 percent discount rate.

These impacts are primarily due to the predicted yearly formal section 7 consultations between the Service and the USFS on allotments in proximity to critical habitat in Unit 1. There are no forecasted post-designation incremental impacts for the other critical habitat units. Thus, costs are not considered to be disproportionate. We will continue to work with the USFS, BLM, and permittees to address concerns related to the Sierra Nevada bighorn sheep during the section 7 consultation process as appropriate.

Units 1, 2, and 4 all contain the features essential to the conservation of the Sierra Nevada bighorn sheep. The benefits of including these units in critical habitat include access to areas for foraging (summer and winter), mating, lambing, bedding, predator avoidance, seasonal elevational movements, and mineral licks.

We have considered the request by the commenters to exclude the areas listed above and the relevant impacts of designation. Based on this record, we have chosen not to exclude these areas.

(40) *Comment:* Domestic sheep producers have been working with Federal agencies informally to prevent contact between domestic sheep and Sierra Nevada bighorn sheep. These practices should be formalized by the grazing permit process.

Our Response: Federal agencies that issue grazing permits that may affect federally listed species consult with the Service as required under section 7 of the Act, as appropriate, even in the absence of critical habitat. The purpose of the section 7 consultation process is to analyze the effects of an action (e.g., the issuance of a grazing permit) to determine if the action will jeopardize the continued existence of the listed species, to provide reasonable and prudent measures to avoid and minimize the impact of incidental take, and, if necessary, to provide reasonable and prudent alternatives to avoid jeopardy. With the designation of critical habitat, Federal agencies will also determine whether the proposed action will adversely modify or destroy critical habitat under this process. The Service has, and will continue to, work with Federal agencies and grazing permittees to address concerns related to the Sierra Nevada bighorn sheep during the section 7 consultation process, as appropriate. Outside of the section 7 consultation process, the Service has the ability to provide comments to other Federal agencies during National Environmental Policy Act (NEPA) review.

(41) *Comment:* Some commenters urged the continued authorization of domestic sheep grazing on lands designated as critical habitat. Others did not support domestic sheep grazing within these areas.

Our Response: The designation of critical habitat does not automatically eliminate or place restrictions on domestic sheep grazing or other land use activities in areas that overlap with critical habitat. For those areas on Federal lands, consultation under section 7 of the Act may be appropriate. Please also see our response to Comments 23 and 39.

(42) *Comment:* A concern was raised that elimination of cattle grazing at higher elevations may occur due to the designation of critical habitat.

Our Response: There are several Federal cattle grazing allotments (USFS and BLM administered lands) that overlap with critical habitat designation in both occupied and unoccupied units. The designation of critical habitat does not automatically eliminate or place restrictions on cattle grazing or other land use activities in areas that overlap with critical habitat. To date, we have not conducted section 7 consultations with other Federal agencies related to impacts of cattle grazing to Sierra Nevada bighorn sheep. However, if the Federal agencies determine that

issuance of grazing permits may affect Sierra Nevada bighorn sheep or its critical habitat, they will request consultation under section 7 of the Act.

(43) *Comment:* One commenter recommended that managed cattle grazing be ''protected,'' or retained, within critical habitat as a recovery tool.

Our Response: There are currently several Federal cattle grazing allotments located within designated critical habitat. We do not know the amount of private lands where cattle grazing may also occur within critical habitat, but the total amount is not more than 1,005 ac (407 ha). Cattle grazing on Federal allotments within critical habitat should be reviewed under section 7 of the Act if it may affect Sierra Nevada bighorn sheep or its critical habitat. In addition, the suggestion that Federal domestic sheep grazing allotments could be converted to cattle grazing allotments to reduce the potential impacts of disease transmission from domestic sheep to Sierra Nevada bighorn sheep has been raised. Allotment conversion would require Federal agency involvement, as well as willingness and ability on the part of the permittee. This suggestion has been included in the final recovery plan for the Sierra Nevada bighorn sheep (Service 2007, pp. 64 and 70).

(44) *Comment:* Habitat protection and disease issues are different and should be treated separately.

Our Response: These issues are treated differently as indicated by the definition of critical habitat stated in this rule under the Critical Habitat section and the activities addressed under the Special Management Considerations or Protection section.

(45) *Comment:* Why is 417,000 ac (168,757.6 ha) needed for 400 Sierra Nevada bighorn sheep?

Our Response: The critical habitat designation of 417,577 ac (168,992 ha) is not only for the estimated 400 Sierra Nevada bighorn sheep's current population. The area of critical habitat is also for the additional animals that are needed for the recovery of the species and to provide sufficient area for their life history requirements. According to the final recovery plan, there should be an estimated minimum total of 305 females at least 1 year of age throughout the four recovery units at the time of delisting (Service 2007, p. 47). Based upon a natural adult sex ratio of about 70 males:100 females, the minimum total population (both sexes) is estimated to be 520 adults at delisting. Since this number is based on a minimum requirement for each recovery unit, the total population is likely to be higher. This number would be higher still with young of the year also included in the total (Service 2007, p. 44).

(46) *Comment:* Why is it necessary to have critical habitat if section 7 is already being used?

Our Response: Under section 7(a)(2) of the act, Federal agencies must consult with the Service to ensure that their actions do not jeopardize the continued existence of listed species. By designating critical habitat, section 7 of the Act also protects the recovery needs of the species by requiring Federal agencies to ensure that their actions will not result in the destruction or adverse modification of designated critical habitat. For additional information, please also refer to our response to Comment 28.

(47) *Comment:* Several comments were received related to recreational activities and what the designation of critical habitat signifies now and in the future. Some commenters recommended that snowmobiles and off-road vehicles be prohibited in critical habitat and existing routes be closed. Others thought it was appropriate to ''exclude'' dogs or require them to be on leashes at all times. Others recommended that no new off-road vehicle trails be built in critical habitat. Others expressed support for our ''exclusion'' of particular recreational areas from the designation. Others requested no restrictions on backcountry use. Others wondered if public use would continue as it does currently. Others recommended that any restrictions apply to both guided and non-guided public alike. A few commenters suggested that the rule be changed to state that most, if not all, types of recreation were non-threatening to Sierra Nevada bighorn sheep, especially when bighorn sheep are not overtly threatened and have access to escape terrain. Some suggested continued monitoring of both Sierra Nevada bighorn sheep and the effects of people's interaction with them as recreation is an important component of the economy.

Our Response: Proposed and final rules designating critical habitat do not automatically eliminate or place restrictions on any recreational activities or opportunities within critical habitat. This rule did not ''exclude'' any particular recreational area from the critical habitat designation; these areas were not included because they did not meet our criteria for designating critical habitat for Sierra Nevada bighorn sheep. For more information on the criteria used to delineate critical habitat please see the Criteria Used to Identify Critical Habitat section in this rule. The designation of critical habitat is not a management plan, nor does it put in effect or restrict management activities. The Special Management Considerations or Protection section of this final rule lists actions that may impact the PCEs for Sierra Nevada bighorn sheep and serves as a guide to Federal agencies that may conduct or permit actions within designated critical habitat. The USFS and National Park Service may have restrictions (e.g., quotas, seasonal closures, dog prohibitions or leash requirements) already in place in some areas to address resource concerns, as well as to reduce impacts to wildlife, including Sierra Nevada bighorn sheep. Due to areas of rugged terrain and inaccessibility, as well as wilderness designations, some recreational activities (e.g., snowmobiling, off-road vehicle use) are not possible within portions of the designated critical habitat. Other activities, such as rock and ice climbing and peak bagging, are specific to these rugged areas. We encourage the public to enjoy the Sierra Nevada while treating it with respect. With proper management, recreational activities can or may be compatible with Sierra Nevada bighorn sheep conservation and recovery. It is the responsibility of the Federal agencies to review the various kinds of recreational activities currently allowed, where they are allowed, and the seasonal use of these areas among other things, to determine if these activities may result in the destruction or adverse modification of critical habitat. Federal agencies will review all proposed actions in accordance with section 7(a)(2) of the act in light of possible increases of sheep-human interaction due to both increasing Sierra Nevada bighorn sheep and human populations, and subsequent habitat use changes. We will continue to work with Federal agencies and those who need Federal permits through the section 7 consultation process to address recreational activities that may affect Sierra Nevada bighorn sheep habitat. We have added some additional information related to bighorn sheep and human interactions in the Special Management Considerations or Protection section in this rule. As previously stated, we will continue to recommend that studies be implemented to clarify any potential impacts of different recreational activities on Sierra Nevada bighorn sheep and their habitat to assist with decision-making processes.

(48) *Comment:* While several commenters expressed support for the critical habitat designation as proposed,

a majority of commenters expressed a desire that additional lands be included. Some offered a general statement to expand the critical habitat designation while others provided more specific statements of additional areas to be included. These recommendations were to include: (1) All historical and currently occupied areas; (2) areas north of Mount Warren; (3) all occupied and unoccupied habitat essential for survival and recovery; (4) all areas identified as of recovery value in the recovery plan; and (5) the Bubbs Creek area.

Our Response: Please see our response to Comment 36.

(49) *Comment:* Many ranchers have lost faith in the Service's ability to implement Sierra Nevada bighorn sheep recovery and re-introduction efforts while protecting ranching operations. For example, ''a rancher lost his Bloody Canyon USFS Allotment, although previously promised that Sierra Nevada bighorn sheep recovery would not require any changes in the use of [the Bloody Canyon] allotment.''

Our Response: The ''promise'' referred to in the comment above relates to two letters, one written by the CDFG dated August 27, 1984, and addressed to the Inyo National Forest, and the other written by the Forest Service dated December 20, 1989, and addressed to the permittee. It is important to note that these letters were written by other agencies prior to the Federal listing of the Sierra Nevada bighorn sheep in 2000, and prior to the Service's involvement with this subspecies. Since the listing of the subspecies and development of the recovery plan, substantial new information has been gathered regarding areas used by Sierra Nevada bighorn sheep. The Service has and will continue to coordinate with individual ranchers, the State of California, and other Federal agencies to promote the recovery of Sierra Nevada bighorn sheep while balancing the needs of affected permittees and conservation of the subspecies through the section 7 consultation process. Also, please refer to our response to Comment 40.

(50) *Comment:* The areas of Twin Lakes, Green Creek, Coyote Ridge, and Bubbs Creek should not be ''excluded'' from critical habitat designation.

Our Response: These four areas were not ''excluded'' from the critical habitat designation. These four areas were not included within our critical habitat designation because they were not determined to be essential for the conservation of the Sierra Nevada bighorn sheep. Please see the Criteria Used to Identify Critical Habitat section for our rationale.

(51) *Comment:* Some commenters agreed that the four existing plans [Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1984); the Bighorn Sheep Management Plan (National Park Service 1986); the Inyo National Forest Resource & Management Plan (U.S. Forest Service 1988); and A Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997)] should not result in the exclusions of lands covered by these plans from critical habitat designation. One commenter thought we should exclude these lands because the plans already exist and there are recovery projects in place.

Our Response: We have indicated our rationale for not excluding areas covered by these four plans as indicated in the Application of section 4(b)(2) of the Act section of this final rule. These plans are general in nature and reflect our knowledge at that time. All plans were prepared prior to the listing of the subspecies. Specific recovery projects and actions are a result of the draft and final recovery plans, not these four documents.

(52) *Comment:* Does the designation of critical habitat allow for management of mountain lions?

Our Response: The designation of critical habitat will not affect the management of mountain lions as their control is not a habitat-based threat. The encroachment of vegetation that provides cover for predators of the Sierra Nevada bighorn sheep is a habitat-based threat, and actions to manage the vegetation encroachment may require special management considerations or protection as discussed in this rule. We, along with CDFG, recognize the role that mountain lions have played in the status of the Sierra Nevada bighorn sheep. Beginning in 2000, CDFG began placing radio collars on mountain lions near Sierra Nevada bighorn sheep ranges and monitoring them to assist in the removal of selected individuals to benefit Sierra Nevada bighorn sheep. Mountain lions are a necessary and important part of the Sierra Nevada ecosystem; Sierra Nevada bighorn sheep have evolved with this predator on the landscape. As the numbers of Sierra Nevada bighorn sheep increase with recovery, the need for mountain lion control specifically for the benefit of Sierra Nevada bighorn sheep should be reduced and eventually eliminated.

(53) *Comment:* One commenter questioned whether land use managers would be allowed to use prescribed burning and logging within critical habitat.

Our Response: Prescribed burning and logging would be considered habitat-based activities that could affect the PCEs. Federally proposed actions would be analyzed during the section 7 consultation process as appropriate. As indicated in the rule, prescribed burning can benefit Sierra Nevada bighorn sheep by increasing visibility of the landscape. These activities may be able to proceed as determined during the section 7 consultation process.

(54) *Comment:* Sierra Nevada bighorn sheep deaths due to tranquilization and horns being ripped off during research activities are a management problem.

Our Response: Since 2001, when CDFG's Sierra Nevada Bighorn Sheep Recovery Program was established, there have been 44 deaths (2 rams, 2 ewes) among the approximately 150 captures conducted to date (2.7 percent) (Stephenson 2008, p. 1). Sierra Nevada bighorn sheep are not tranquilized. One ewe is known to have broken a horn sheath (not horn) during capture activities. Documentation of injuries or deaths occurring during capture activities must be provided to the Service under CDFG's section 10(a)(1)(A) recovery permit issued under the Act. The reporting documentation must describe in detail the circumstances that led to the injury or mortality and include a description of the changes in activity protocols that will be implemented to reduce the likelihood of such an injury or mortality from occurring again. All incidents are reviewed by the Service and capture procedures are changed, if necessary, to reduce subsequent injuries or deaths. The recovery permit allows for a determined level of incidental take to occur on an annual basis that will not jeopardize the continued existence of the species. In addition, the importance and recovery value of information obtained during these activities and subsequent monitoring of Sierra Nevada bighorn sheep is utilized in our population management and rangewide recovery management decisions. Although we acknowledge that certain levels of take may occur when conducting authorized activities for Sierra Nevada bighorn sheep, we make every effort to minimize take to the maximum extent practicable.

(55) *Comment:* The Special Management Considerations and Protection section provides no assurances that existing development

activities, livestock grazing, mining, recreation, etc. can continue.

Our Response: The Special Management Considerations or Protection section of this rule identifies the types of activities that could impact the PCEs in the designated critical habitat units. It is not meant to provide assurances but to identify areas of concern for Federal agencies to determine if a proposed action may affect Sierra Nevada bighorn sheep habitat and should be addressed under the section 7 consultation process. Please also refer to our response to Comment 28.

(56) *Comment:* Explicit management recommendations for off-road vehicles and domestic sheep grazing should be included in the final rule.

Our Response: In the Special Management Considerations or Protection section, we indicate various management activities that may affect designated critical habitat. We purposefully do not provide explicit management recommendations for the various activities so that the action agency and the Service can determine appropriate measures on a case-by-case basis during the section 7 consultation process.

(57) *Comment:* The purchase of private lands should be a priority to reduce the concern of disease transmission from domestic to Sierra Nevada bighorn sheep.

Our Response: There is little private land (1,005 ac (407 ha)) within the units designated as critical habitat. We do not know the extent of private acreage, if any, that provides domestic sheep or goat grazing. The purchase of private lands for the purposes of critical habitat is not within the scope of this final rule; however, purchase of private lands from willing sellers would be an option for recovery purposes and could, in some areas, reduce the potential of disease transmission from domestic to Sierra Nevada bighorn sheep.

(58) *Comment:* One commenter stated there is little definitive information or predictive ability regarding avalanches in almost all areas recommended as critical habitat. The rule should reflect real and practical activities not speculative ones such as avalanche control.

Our Response: We agree that it is difficult to predict and manage avalanche danger in many areas of the Sierra Nevada, and we are not proposing a comprehensive plan for control of avalanches to protect Sierra Nevada bighorn sheep. However, opportunistic management of avalanche danger in some locations may be possible (e.g., SR 120 corridor). Mortality of Sierra Nevada bighorn sheep from avalanches is a real and documented threat that can result in losses of large numbers of individuals. We are working to buffer the subspecies against these stochastic losses by establishing additional populations that spread the risk across a larger area. We are also working to improve winter range habitat, to reduce winter range predation, and to increase population sizes. The goal of these activities is to increase use of winter range by Sierra Nevada bighorn sheep, so that they are not at high elevation locations during the season of highest avalanche danger. However, we do not rule out the possibility of recommending avalanche control in areas where we believe it might be effective in protecting some populations that are not utilizing winter range.

(59) *Comment:* Sheep crossing signs should be installed in the Tioga Pass and June Lake Loop areas for the safety of motorists as well as the Sierra Nevada bighorn sheep.

Our Response: Sign placement is outside the scope of this rule. However, the Service is supportive of continuing efforts to increase public awareness of Sierra Nevada bighorn sheep.

(60) *Comment:* The critical habitat overlaps existing wilderness designations creating another layer of bureaucracy.

Our Response: Some of the critical habitat units do overlap portions of wilderness; however, these two designations do not achieve the same goals. The Wilderness Act of 1964 created a National Wilderness Preservation System. Federal lands designated by Congress as ''wilderness areas'' are to be ''administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use as wilderness, and as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.'' A wilderness designation prohibits commercial enterprises; permanent roads (with some exceptions); use of motorized vehicles, equipment, and boats; aircraft landing; temporary roads; and structures or installations (with some exceptions). It does not prohibit activities such as some mining and associated activities, water resource and development and their associated support facilities, grazing, and recreational activities. The Wilderness Act also did not affect the ''jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.'' The stated purpose of the ESA, as amended, is, in part, '' * * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species.'' Some activities that are permissible under the Wilderness Act may affect the conservation of the Sierra Nevada bighorn sheep as indicated in our Special Management Considerations or Protection section. Therefore, the designation of critical habitat provides protections to the Sierra Nevada bighorn sheep that a wilderness designation does not.

(61) *Comment:* Manage ''all suitable historic range'' for Sierra Nevada bighorn sheep as events such as fire may create landscape changes that may encourage use in areas of historic range not currently suitable.

Our Response: Please see our response to Comment 36.

Comments Related to Criteria and Methods

(62) *Comment:* Critical habitat should not be reduced to avoid potential difficulties with conflicting uses such as domestic sheep grazing in the northern units.

Our Response: We have not reduced the amount of designated critical habitat in this final rule compared to the proposed rule due to potential conflicts with domestic sheep grazing. Please review the Criteria Used to Identify Critical Habitat section, as well as our response to Comment 39. The two herd units in the northern area, Twin Lakes and Green Creek, were not included in the critical habitat designation because they did not meet our criteria and are not considered essential to the conservation of the Sierra Nevada bighorn sheep. There is scientific uncertainty regarding whether these two herd units can support viable herds. There is a lack of historical evidence indicating numbers and uncertainty about connectivity between summer and winter ranges. Potential conflict with domestic sheep grazing was not a factor for not including these two areas in the designation.

(63) *Comment:* A concern was raised regarding the use of a road in proximity of critical habitat boundaries.

Our Response: Existing roads and the lands under them are not considered critical habitat. Please also refer to our response to Comment 12.

Comments Related to Taxonomy

(64) *Comment:* The taxonomic revision should not be included in a rule on critical habitat.

Our Response: While this rule is primarily to designate critical habitat for the Sierra Nevada bighorn sheep, the Service legally and appropriately determined to use this rulemaking process to address and correct related issues. The final listing rule published on January 3, 2000 (65 FR 20), inadvertently listed this entity as a DPS rather than as a subspecies. We sought to use our limited resources most efficiently by proposing the taxonomic revision to the Sierra Nevada bighorn sheep with our proposed critical habitat designation. We are revising the scientific name for the Sierra Nevada bighorn sheep from *Ovis canadensis californiana* to *Ovis canadensis sierrae* based on the current understanding of this subspecies' taxonomy.

(65) *Comment:* The taxonomic issue was not adequately addressed in the proposed rule.

Our Response: We have provided a more thorough discussion of the genetic and morphometric studies supporting the distinctness of Sierra Nevada bighorn sheep as compared with other bighorn sheep populations in the Background section of this final rule.

(66) *Comment:* One commenter stated that the taxonomic question of whether the Sierra Nevada bighorn sheep is a unique subspecies should be answered before proceeding with the critical habitat designation.

Our Response: The Sierra Nevada bighorn sheep, at listing, was thought to be part of a larger California bighorn sheep subspecies, *Ovis canadensis californiana*. However, based on the best scientific information available, genetic and morphologic research now indicates it should be classified as a separate subspecies, *O. c. sierrae*. Please see additional information provided in the Background section of this rule. We are aware of an unpublished preliminary analysis performed by the NDOA suggesting that Sierra Nevada bighorn sheep may be part of a continuous population of Nevada desert bighorn sheep. This analysis is based on microsatellite markers of samples collected from approximately 100 desert bighorn sheep from Nevada and California and one Sierra Nevada bighorn sheep from California. These results are preliminary and limited due to the single sample for Sierra Nevada bighorn sheep. This analysis has not been presented as a technical paper or published in a peer reviewed scientific publication. We cannot consider this as substantial new information at this time. Until further research is conducted either supporting or rejecting the suggestion that Sierra Nevada bighorn sheep is a part of a continuous population of Nevada desert bighorn sheep, we will use the best scientific information currently available indicating that Sierra Nevada bighorn sheep should be classified as a separate subspecies, *O. c. sierrae*.

(67) *Comment:* The animals found north of Mammoth Lakes should be declared Nelson bighorn or Nelson/Sierra Nevada bighorn sheep hybrids.

Our Response: The commenter did not provide any data to support this statement, nor do we have any data to support this statement. Please refer to our response to Comment 66.

(68) *Comment:* Sierra Nevada bighorn sheep genetic material should be released to a third party so additional analyses can be conducted to determine whether this is a distinct subspecies.

Our Response: To conduct research on a listed species, such as involving genetic material (considered a body part), a section 10(a)(1)(A) of the Act permit application must be submitted to the Service. The permitting process is described in 50 CFR 17.22, Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking. Currently, only one entity has applied for and been issued a permit under section 10(a)(1)(A) of the Act for research activities involving Sierra Nevada bighorn sheep; this permit covers several individuals and institutions specifically listed in the permit.

Comments Related to Legal and Procedural Issues

(69) *Comment:* There is public frustration that a lawsuit is instigating designation of critical habitat at this time.

Our Response: The Act requires designation of critical habitat at the time of listing unless not prudent or undeterminable. We are complying with a court approved settlement agreement to designate critical habitat for Sierra Nevada bighorn sheep. As indicated by the settlement agreement, we are required to submit to the **Federal Register** a final determination of critical habitat designation by July 17, 2008. Please see our Previous Federal Actions section of the rule for further details.

(70) *Comment:* A commenter was concerned that the final critical habitat designation could be expanded in the future.

Our Response: Section 4(a)(3)(B) of the Act provides that critical habitat designations may, from time-to-time, be revised. A revision can propose an expansion or contraction of the boundaries. Any such revision would again be published in the **Federal Register** as a proposed rule with an opportunity for public comment before any such revision is made final.

(71) *Comment:* Why was the designation for critical habitat for the Sierra Nevada bighorn sheep not completed sooner?

Our Response: Please refer to the Previous Federal Actions section of this final rule for additional information on this topic.

(72) *Comment:* The Service must designate sufficient critical habitat to support the ''conservation'' and ''recovery'' of the Sierra Nevada bighorn sheep, not just survival.

Our Response: The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and the areas outside the current range of the species that are essential for its conservation. In identifying those lands, the Service must consider the recovery, as well as the survival, needs of the species. Once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not destroy or adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the jeopardy and adverse modification standards are distinct. Through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not result in the destruction or adverse modification of designated critical habitat.

This final designation of critical habitat identifies units that are identical to those herd units that the recovery plan for the Sierra Nevada bighorn sheep identifies as necessary for recovery. Therefore, we believe we fully considered the recovery and survival needs of the Sierra Nevada bighorn sheep in this designation of critical habitat.

(73) *Comment:* The four herd units not included in the critical habitat likely qualify as a significant portion of the range for Sierra Nevada bighorn sheep. If Sierra Nevada bighorn sheep are recovered in the critical habitat, the subspecies would still be considered threatened or endangered in a significant portion of its range due to the four units not being included. The designation ignores recommendations of scientists that indicate that the Northern Recovery Unit is needed for recovery

and does not meet the recovery plan's objectives for reintroducing animals to vacant herd units or for increasing the number of herds by increasing geographic distribution and numbers.

Our Response: The determination of a significant portion of a species range is not relevant to the designation of critical habitat. Rather, it applies in the context of listing or delisting a particular species; therefore, we do not consider what constitutes a significant portion of a species range in this final designation of critical habitat.

The recovery plan identifies four specific measurable criteria for delisting. Delisting Criterion B2 indicates that Sierra Nevada bighorn sheep must occupy 12 herd units. The recovery plan specifies 12 essential herd units that would likely contribute to recovery by receiving Sierra Nevada bighorn sheep through translocation or natural migration. The plan also identifies four non-essential herd units as locations that Sierra Nevada bighorn sheep could occupy based on historical Sierra Nevada bighorn sheep locations and habitat characteristics. However, the recovery plan did not identify these four herd units as essential to recovery because of uncertainty over whether viable populations could persist in these locations long-term. Three of the four non-essential herd units are currently unoccupied.

Because the critical habitat units and essential herd units have the same boundaries, we can achieve population size and distribution recovery goals for this species if we can establish and maintain populations within them. These critical habitat units are consistent with the recovery plan's goal of establishing new herds in currently unoccupied suitable habitat. Five of the critical habitat units are currently unoccupied, but we have designated them as critical habitat because these areas are essential to the establishment of herds that are necessary for recovery of the species.

Therefore, the recommendation for retaining the Northern Recovery Unit has been addressed through identification of the Mount Gibbs and Mount Warren essential herd units in the recovery plan and designation of critical habitat encompassing these two units.

(74) *Comment:* The rule should be suspended until the ''required determinations'' have been made.

Our Response: As stated in the proposed rule, we indicated we would wait on the draft economic analysis to respond to various determinations. On February 5, 2008 (73 FR 6684), we published the notice of availability of our draft economic analysis, which also included our amended required determinations based on the draft economic analysis. This final rule contains our final required determinations which are based on the final economic analysis of this critical habitat designation. Please see the Required Determinations section for more information.

(75) *Comment:* The Service did not have resumes for the peer reviewers.

Our Response: The Service solicits opinions of independent peer reviewers to ensure that our designations are based on ''scientifically sound data, assumptions, and analyses.'' Our longstanding practice does not require resumes to be submitted by peer reviewers.

(76) *Comment:* A commenter noted that one of the solicited peer reviewers was included in the literature citations for the proposed rule and questioned whether the peer reviewer had input during preparation of the proposed critical habitat.

Our Response: The citation is for a document published by the peer reviewer in 2002. The peer reviewer did not have input during the preparation of the proposed critical habitat designation. Like the public, it is appropriate for a peer reviewer to provide input for a final critical habitat designation through comments on the proposed designation.

(77) *Comment:* An Environmental Impact Statement (EIS) should be required for any proposed project which may affect critical habitat.

Our Response: Requiring an EIS is beyond the scope of a critical habitat designation. The Federal action agency will be responsible for the appropriate level of NEPA compliance with respect to any future proposed project. The level of such compliance would be determined by the action agency at that time.

(78) *Comment:* A few comments were received related to the two public meetings and one hearing held on the proposed critical habitat designation. While some people expressed appreciation of the Service's time and the opportunity to review maps, obtain hand out materials, and ask questions of Service employees one-on-one, others wanted a formal presentation with an opportunity to ask questions in a group setting. One commenter objected that public speaking time at the hearing was limited when few people had signed up to speak.

Our Response: Although we have complied with the appropriate legal requirement, we appreciate this feedback and will continue to seek opportunities to share information on Sierra Nevada bighorn sheep with the public.

(79) *Comment:* Critical habitat boundary maps should have been overlaid on a topographic map.

Our Response: Maps published in the **Federal Register** must be printed in a simplified format. In addition, due to the remote locations of the units, the number of landmarks available to assist with location descriptions is limited. The boundary descriptions in the Regulation Promulgation section of the final rule indicate the specific critical habitat unit boundaries.

(80) *Comment:* One commenter stated that the Service was moving too quickly and without having documents peer reviewed before citing them in the proposed critical habitat rule and DEA. The study by Clifford *et al.* (2007) was used as an example.

Our Response: As indicated in the Critical Habitat section of this rule, we are legally required to use the best scientific and commercial data available when designating critical habitat. Under our Policy on Information Standards Under the Endangered Species Act and the Information Quality Act, we are able to use information available to us as publications in peer-reviewed scientific journals, agency documents, reports, etc. Many of these documents are not peer reviewed. Our use of Clifford *et al.* (2007) is not the basis for our designation of critical habitat for this subspecies; rather, we used it to provide information related to assessing the risk of and potential for a respiratory outbreak in Sierra Nevada bighorn sheep due to contact with domestic sheep. Addressing the presence of domestic sheep and grazing activities within critical habitat relates to the Special Management Considerations or Protection section. Please see our response to Comment 17.

Comments Related to Economic Issues

(81) *Comment:* It was requested that the Pine Creek Mine be excluded from the critical habitat designation for economic, national security, and safety issues.

Our Response: When determining critical habitat boundaries for Sierra Nevada bighorn sheep, we made every effort to avoid including developed areas such as lands covered by buildings, paved areas, and other structures that lack PCEs for the Sierra Nevada bighorn sheep. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such features and the land under them

inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or PCEs in adjacent critical habitat.

We consider activities such as new road construction, maintenance activities, road widening, and mining and construction of associated facilities as potentially impacting additional lands not within the footprint of existing facilities. These activities may affect the features that may need special management considerations or protection within designated critical habitat units. Federal agencies consult under section 7 of the Act to ensure that their proposed actions do not jeopardize the continued existence of the Sierra Nevada bighorn sheep or result in the destruction or adverse modification of its critical habitat. We have determined that undeveloped areas of the Pine Creek Mine are essential to the Sierra Nevada bighorn sheep as they contain the features essential to the conservation of the subspecies and meet the definition of critical habitat. Please see the Criteria Used To Identify Critical Habitat section for more information. One of our objectives is to provide consistency between critical habitat designation and the essential habitat indicated in the final recovery plan (Service 2007, p. 41).

The Secretary may exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned.

We have considered this request by the commenter. We appreciate the commenter's willingness to continue to work with California Department of Game and Fish and the Service and provide access and use of mine roads, the helipad, and parking lots to assist with Sierra Nevada bighorn sheep monitoring activities. We are aware of the revegetation of tailings piles during the mine's idle years which have subsequently been used by Sierra Nevada bighorn sheep during winter months. We have previously consulted with the USFS on mining associated activities related to this mine and determined that those activities were not likely to adversely affect the Sierra Nevada bighorn sheep. Since critical habitat has not been previously proposed or designated for this species, it is anticipated that the USFS will initiate section 7 consultation as appropriate for any new activities proposed by the mine operators for which action agency authorization is required. These new activities may include construction or modification of escapeways and other safety facilities and surface stations and reworking of existing tailings piles. We will continue to work with the USFS and the permittee to address concerns related to the Sierra Nevada bighorn sheep during the section 7 consultation process as appropriate.

According to the final EA, post-designation baseline (due to listing) undiscounted costs for habitat management of which Pine Creek Mine is a portion is estimated at $14.8 million over the next 20 years (including $267,000 for impacts due to mining consultations). Post-designation incremental undiscounted costs (due to the designation of critical habitat) for mining consultations are estimated to be $14,640 over the next 20 years. These impacts are due to the predicted section 7 consultations by the USFS to address mining activities. Thus, costs are not considered to be disproportionate and we are not excluding these lands based on economic impacts.

The commenter also requested lands be excluded based on national security concerns. The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended section 4(a)(3)(B) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) to state that 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 resource management plan (INRMP) 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. The land in question is not Department of Defense land and does not have an INRMP. While the commenter provided information on use and application of tungsten in military applications, we do not believe that the designation of critical habitat will preclude the continued operation of the Pine Creek Mine. Additionally, a designation of critical habitat is not likely to preclude further development or exploration at the mine. Any future consultations under section 7 of the Act will include an analysis of adverse modification of critical habitat as well as a jeopardy analysis. We will continue to work with the USFS and permittee to address concerns related to the Sierra Nevada bighorn sheep during the section 7 consultation process as appropriate. Therefore, we are not excluding these lands based on national security concerns.

In conclusion, based on the record before us, we are not excluding those USFS lands on which the Pine Creek Mine occurs that meet the definition of critical habitat for Sierra Nevada bighorn sheep.

(82) *Comment:* The economic analysis should be conducted in a timely manner.

Our Response: Pursuant to 50 CFR 424.19, we are not required to conduct an economic analysis at the time critical habitat is proposed. It would be ideal to provide the draft economic analysis with the proposal. However, due to the short time frame to complete the proposal, we were unable to do so. We published the proposed critical habitat designation on July 25, 2007 (72 FR 40956), invited public comment, and held one hearing and two informational meetings. We reopened the public comment period on the draft economic analysis and the proposed critical habitat designation for 30 days beginning on February 5, 2008 (73 FR 6684). We believe we provided adequate time for the public to provide comment on the proposed rule as well as the economic analysis consistent with the court-approved deadline for this determination. Comments received during the two open comment periods and during the public hearing and informational meetings were reviewed and incorporated into our decision making process as appropriate.

(83) *Comment:* The economic analysis for the critical habitat designation should show the cumulative impacts since listing the species.

Our Response: In the economic analysis, costs were developed as pre-designation baseline, post-designation baseline, and post-designation incremental impacts. The pre-designation baseline and the post-designation baseline indicate the costs of the impacts of listing of the Sierra Nevada bighorn sheep. The post-designation incremental impacts are differentiated from the baseline as they are specifically related to the critical habitat designation. Thus, the economic analysis does provide a cumulative analysis of the economic impacts of actions taken to protect the Sierra Nevada bighorn sheep since its listing. Please refer to the final economic analysis for details.

Comments Related to the Draft Economic Analysis

Policy Issues

(84) *Comment:* One commenter states that the DEA does not state that while nearly half of the estimated economic impacts from proposed critical habitat are from the Mount Warren and Mount Gibbs habitat units, the northern herd units contain less than five percent of the total Sierra Nevada bighorn sheep herd population. The comment also states that incurring these impacts would be a futile, huge waste of money and that the DEA should draw the same conclusion.

Our Response: As described in the framework of the economic analysis (Chapter 1), the purpose of the analysis is to estimate the economic impacts of Sierra Nevada bighorn sheep conservation measures as comprehensively as possible with publicly available data. A judgment concerning effectiveness or efficiency of the conservation measures that may be required by critical habitat designation is beyond the scope of the economic analysis.

(85) *Comment:* One commenter is concerned that the DEA does not calculate the costs of regulatory takings.

Our Response: In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Sierra Nevada bighorn sheep in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Sierra Nevada bighorn sheep does not pose significant takings implications.

(86) *Comment:* A commenter stated that there was not enough time provided in the comment period. Instead of designating critical habitat, the Service should set up a pilot program in order to get insight from the ranchers and biologists together. Information from the pilot program could then be used for designating critical habitat.

Our Response: On October 9, 2007 (72 FR 57276), we extended the time period for public comment on the proposed critical habitat designation to gather additional information. A second comment period was opened for comments on the DEA and the proposed rule on February 5, 2008 (73 FR 6684). In our proposed rule we asked for ways that we could improve or modify our approach to designating critical habitat. This could include ways to provide greater public participation or ways to better accommodate public concerns and comments. We appreciate the idea about establishing a pilot program for public participation. We welcome details from the commenter on the specifics of how that could be implemented.

(87) *Comment:* A few commenters stated that the DEA does not quantify any benefits. These benefits could be consumptive, non-consumptive or scenic.

Our Response: In the context of a critical habitat designation, the primary purpose of the rulemaking (i.e., the direct benefit) is to designate areas that contain the physical and biological features that are essential to the conservation of listed species. The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use; and (2) nonuse benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from the knowledge that a particular listed species' natural habitat is being specially managed for the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions.

A primary reason for conducting this economic analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Economic impacts can be both positive and negative and, by definition, are observable through market transactions.

Under Executive Order 12866 (E.O. 12866), Office of Management and Budget (OMB) directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions. OMB's Circular A–4 distinguishes two types of economic benefits: Direct benefits and ancillary benefits. Ancillary benefits are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking. In the context of critical habitat, the primary purpose of the rulemaking (i.e., the direct benefit) is to assist in the conservation of the species. The published economics literature has documented that social welfare benefits can result from the conservation of endangered and threatened species. In its guidance for implementing E.O. 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

Critical habitat designation may also generate ancillary benefits. Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. Critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. Management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region's economy resulting from actions to conserve a species or its habitat.

It is often difficult to evaluate the ancillary benefits of critical habitat designation. To the extent that the ancillary benefits of the rulemaking may be captured by the market through an identifiable shift in resource allocation, they are factored into the overall economic impact assessment in the EA. Where data are available, the analysis attempts to capture the net economic impact (i.e., the increased regulatory burden less any discernable offsetting market gains) of species conservation efforts imposed on regulated entities and the regional economy.

General Methodology

(88) *Comment:* A commenter states that it is not feasible to do an economic analysis without preparing environmental impact statements because the inability of the DEA to

predict future restrictions makes the report too vague.

Our Response: The best predictions possible concerning conservation efforts and their impacts have been provided, based on multiple interviews with key stakeholders and review of the publicly available data. Legally, an EIS is not required for this purpose.

(89) *Comment:* One commenter states that the DEA does not estimate the true cost of not allowing grazing on a Federal grazing allotment and deliberately understates the value of an AUM. The commenter asserts that provided documentation proves that this is true.

Our Response: Additional detail has been added to the DEA to address the concerns raised in this comment. Section 2.1.4 has been substantially extended; the section now provides a more detailed explanation of how valuing public grazing AUMs at the market rate is the most appropriate economic methodology and is the method that is most commonly used as well. A more recent value of grazing value (the 2007 market rate of $16.50) is provided; the economic estimates have been updated to include this new information. Section 2.1.4 also discusses other AUM valuation methodologies (cited in the provided information referenced in the comment) and shows how these methodologies do not measure the resource value (which the market rate does), how estimates based on these methodologies are highly dependent on the specific sample that is used to create them, and how different assumptions and different studies can produce substantially different estimates of AUM values for ranches in the same general vicinity. Exhibit 2–3 shows that the value of an AUM from these studies, using the same methodology, generates values from $2.41 to $84 per AUM. Section 2.6 has been added to address the limitations of the valuation methods in Chapter 2. A technical appendix (Appendix D) has also been added to the DEA to provide greater detail on how the grazing impacts were calculated, and to explain why some information in the documentation referenced in the comment was not used in the writing of Chapter 2.

(90) *Comment:* A commenter states that if formerly available Federal allotments are not able to be grazed, then the rancher will have to sell the band of sheep and will not be able to ranch anymore. The commenter asserts that the grazing restrictions may drive the rancher out of business. The commenter asserts that provided documentation proves that this is true.

Our Response: Additions to Section 2.1.4 address this concern. The last four paragraphs of Section 2.1.4 explain how one of the research papers listed in the provided documentation provides information that finds that reductions of up to 30 percent in Federal grazing AUMs can be sustained by Northern Nevada ranches without affecting ranch profitability. The ranch experiencing Federal grazing AUM reductions, as discussed in Section 2.1.4, has a maximum estimated reduction of 11 percent.

(91) *Comment:* Several comments state that the DEA does not present an analysis of how the grazing restrictions will affect the larger economy. One of these comments states that documentation provided for the analysis shows what these impacts would be. This comment states that the DEA does not properly account for the expenditures of the rancher that grazes in areas proximate to the Sierra Nevada bighorn sheep and that the analysis does not address the impact of how smaller herd sizes would affect the economies of Mono and Inyo Counties. One comment specifically asks where IMPLAN has been used in the analysis.

Our Response: To address the concerns raised by these comments, a regional analysis of the impacts of Sierra Nevada bighorn sheep related reductions in Federal grazing is provided in Section 2.5. This analysis uses IMPLAN, a widely used methodological tool (called an ''Input-Output'' model) used for regional economic analysis to perform the analysis for Mono and Inyo Counties. The results indicate that the $261,000 yearly loss of grazing value in Mono County results in additional losses of $70,696 per year in that county. The $14,000 grazing value reductions in Inyo County results in an additional yearly $4,445 of indirect and induced impacts to be lost. Section 2.5 also explains how the results of the regional analysis represent a change in the distribution of economic activity but do not measure the net effect on that activity (adjustments are made to behavior following the grazing restrictions that regional analysis can not measure). The section explains that while the IMPLAN results are valid for a distributional analysis, they are not measures of economic welfare change and, therefore, are inappropriate to include with the welfare analysis measures that are the main subject of the DEA. This issue is also discussed in Section 1.2.2.

(92) *Comment:* One commenter states that the DEA does not forecast the impacts of grazing restrictions far enough into the future.

Our Response: Section 1.3.5 of the analysis explains that the standard for the analysis is to forecast land uses that are reasonably foreseeable, which is within a 20-year span. This forecasting period is applied equally to all parts of the report.

(93) *Comment:* One commenter states that not all impacts that were listed in supplied documents are included in the DEA.

Our Response: Appendix D has been added to clarify what information was used in the grazing chapter estimation and how the information was used. Section D–1 provides information about how conservation effort impact information in the provided documentation was used and how calculations were made. Section D–2 discusses information from the provided documentation that was not used because it was either unuseable (as detailed in Exhibit D–2) or because the DEA already estimates the impacts provided in the documentation.

(94) *Comment:* One commenter states that the DEA should quantify the benefits to users of the watershed, consumers of water from the watershed, and the costs that Federal Agencies incur in managing the grazing if grazing is discontinued in the Forest Service allotments.

Our Response: The economic impacts discussed in Section 2.3 are those impacts that would be due to a continuation of the policies that are currently in place; no estimation of benefits for additional closures is warranted.

(95) *Comment:* A commenter stated that the opportunity cost of forage values are incorrectly measured. The commenter stated that the public grazing price ($1.35 per AUM) should be used to measure the lost opportunity cost of grazing on allotments instead of the private market price. The comment then states that the DEA should have used the Nevada private market grazing price.

Our Response: Section 2.1.4 has been expanded to address this concern. More details on the use and rationale for market rate valuation are provided, as well as citations concerning the use of the methodology by other Federal agencies. The estimates for grazing have been updated with the 2007 average grazing value in California from the National Agricultural Statistics Service. Since the grazing allotments are in California, and not Nevada, it is more appropriate to use the California AUM price.

(96) *Comment:* Several comments expressed concern that the DEA did not provide more information or estimates about future potential restrictions on recreation activities that may result from critical habitat designation. These comments stressed the importance of recreation activities to the local economies.

Our Response: Section 4.1 explains how no public agency (Federal or State) that is involved with the management of Sierra Nevada bighorn sheep habitat can predict any potential restriction on recreational activities at this time. Section 4.1.1 has been added to address the importance of recreation and tourism to the counties where proposed critical habitat is located. Exhibit 4–1 has been added to provide specific information about the number and size of recreation and tourist businesses and the percentage of employment in these industries. Section 4.5 has been added to address the uncertainty that is part of the analysis because no predictions about restrictions can be made at this time.

(97) *Comment:* One commenter stated that only one packer was contacted and asked about the impacts of permitting on pack operations. The comment asks for more details on who was contacted and questions whether a representative sample of each area was questioned. The comment states that there is only one pack outfitter in Virginia Lakes.

Our Response: To respond to the concerns raised in this comment, an additional source was contacted. This source confirmed that no direct impacts of Sierra Nevada bighorn sheep conservation on pack outfit permitting could be estimated. This source also provided information on the revenues of pack outfit operations in Inyo and Mono counties, which have been included in Section 4.1.1.

(98) *Comment:* One commenter stated that the estimated impacts in Chapter 4 (recreation) do not specify a caveat that the estimates of total forecast impacts could be wrong by orders of magnitude if some currently unanticipated restriction is put in place.

Our Response: The DEA cannot provide economic impact estimates for events that cannot be predicted. However, to respond to the concerns of the commenter, Section 4.1.1 was added to include recreation related employment and revenue statistics for the potentially affected counties. The chapter now provides information that shows the importance of recreation to the local economy. Section 4.5 has also been added to address how the uncertainty about future conservation measures is a limitation to the analysis.

(99) *Comment:* One commenter states that the Avocet Tungsten Mine has clearance to resume mining operations this year and plans to do so. The comment reiterates the value of the ore and its strategic importance.

Our Response: This comment contains new information. In response to the comment, Service Field Office personnel were contacted and potential conservation measures were forecast. Section 3.1.3 now includes a discussion of these measures, estimates of the costs of their implementation, and estimates of the costs for predicted consultations.

(100) *Comment:* Several commenters asked for more details on the grazing portion of the economic analysis, and how it was performed. More information on the streams of costs and benefits was requested.

Our Response: Appendix D has been added to address these concerns. This appendix describes the data sources and explains the calculations in great detail.

(101) *Comment:* One commenter asked for the basis of the discount rates used.

Our Response: The discount rates used are those suggested by the Office of Management and Budget Circular A–4 which provides guidance on performing economic regulatory analysis. This information is now included in Appendix D.

(102) *Comment:* One commenter stated that ''actions that eliminate ranchers as residents of these rangelands'' would increase risks because illegal activity would spread and grow in the forest if the sheep ranchers were not there.

Our Response: There are no publicly available models or data to show that an economic loss may result in increased illegal activity in that area. If there are minimal impacts on ranch profitability, as suggested in the conclusion to Section 2.1.4, such results are less likely.

(103) *Comment:* One commenter stated that Mono County is concerned that a grazing allotment lease they have may be affected.

Our Response: The DEA includes information on all of the grazing restrictions that can be predicted at this time. No Mono County leases are known to be considered for restrictions at this time. These allotments occur on County lands. They would not be affected by the critical habitat designation unless a Federal nexus applies, such as where a landowner requests Federal agency funding or authorization of an action. Please see the Critical Habitat section of this rule.

(104) *Comment:* One commenter asked how many AUMs are restricted in the grazing chapter.

Our Response: This information is provided in Exhibit 2–2. Appendix D has been added to explain how the AUM forage values foregone were calculated.

(105) *Comment:* One commenter stated that the incremental impacts of potential yearly consultation on grazing for Humboldt-Toiyabe (HT) National Forest allotments over-estimate the true impacts because there are likely to be fewer consultations, and HT may decide to close grazing on those allotments regardless.

Our Response: As discussed in Section 2.1.3, there have been yearly section 7 consultations for grazing in HT each year from 2004 to 2007. These yearly consultations are not expected to stop. Contact with the HT officials indicates that yearly consultation is the most probable outcome, rather than allotment closure (see footnote 31). The basis for allocating a portion of the section 7 consultation costs as incremental impacts is described in Section 1.3.2 and illustrated in Exhibit 1–2.

(106) *Comment:* One commenter stated that the research costs and litigation costs incurred by the sheep grazers should not be included in the analysis.

Our Response: The legal and research costs discussed in Section 2.1.3 are indirect costs associated with the species listing. Quantification of indirect impacts is discussed in section 1.3.2. Appendix D has been added to provide information about which conservation related expenditures for grazing were used in the analysis and which were not.

(107) *Comment:* A commenter stated that there is no basis for the ''administrative costs for complying with regulations'' provided.

Our Response: This information was based on reported activity levels by the affected sheep raiser. This sheep raiser reported the effort level and wage, and reported a total that did not correspond to the effort level and wage. The estimate is provided in Exhibit 2–1, and the explanation in Note #2 provides details about how this estimate was calculated. Appendix D has been added to provide information about which conservation related expenditures for grazing were used in the analysis and which were not.

(108) *Comment:* One commenter stated that there is no reference or explanation given for stress induced weight loss among lambs.

Our Response: Section 2.1.3 discusses this problem, but does not specify how it is calculated or what the source is. Appendix D has been added to provide information about which conservation related expenditures for grazing were used in the analysis and how they were used.

(109) *Comment:* One commenter asked that all computer software used that is more extensive than simple Net Present Value calculations be provided.

Our Response: The economic analysis also uses ArcGIS, and IMPLAN, which are both commercially available software packages.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for Sierra Nevada bighorn sheep, we reviewed and considered comments from peer reviewers and the public on the proposed designation published on July 25, 2007 (72 FR 40956), and the draft economic analysis published on February 5, 2008 (73 FR 6684). This final rule differs from the proposed rule in that we made changes in the following sections of the proposed rule: Background, Previous Federal Actions, Primary Constituent Elements, Special Management Considerations or Protection, Criteria Used to Identify Critical Habitat, Critical Habitat Designation, and Regulation Promulgation. These changes included corrections, new information, or clarifications. Changes included clarifying Sierra Nevada bighorn sheep biology; adding information on bighorn sheep taxonomy; updating information about the latest Federal actions related to Sierra Nevada bighorn sheep; updating reference to the Service's final recovery plan and its information; clarifying the Primary Constituent Elements for Sierra Nevada bighorn sheep; adding information related to the effects of disease transmission to bighorn sheep; including cattle in livestock grazing issues; adding information on recreational activities and possible habituation by bighorn sheep; deleting unsuitable references related to disease issues; correcting a landmark used in unit descriptions; clarifying language used with PCEs and special management considerations or protection; and changing the indicated historic range from U.S.A. (western conterminous States), Canada, (south-west), Mexico (north) to U.S.A. (CA)—Sierra Nevada due to the change from its range as a DPS of the subspecies *Ovis canadensis californiana* to its range as its own subspecies *Ovis canadensis sierrae*.

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

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical or biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designations, will continue to be subject

to conservation actions. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical or biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs required for Sierra Nevada bighorn sheep from its biological needs.

Space for Individual and Population Growth and for Normal Behavior

In general, Sierra Nevada bighorn sheep inhabit open areas where the land is rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5). In the Sierra Nevada, these bighorn sheep occur within a wide range of elevations, from alpine peaks in excess of 14,100 ft (4,300 m) to the base of the eastern escarpment as low as 4,790 ft (1,460 m) (Wehausen 1980, pp. 3 and 82). Recent modeling efforts (Johnson *et al.* 2005) have clarified and supported our knowledge that Sierra Nevada bighorn sheep habitat occurs as low as 4,000 ft (1,219 m) in the southern portion of its range. Within this elevational range, a variety of vegetation communities exists, including: (1) Great Basin sagebrush-bitterbrush-bunchgrass scrub; (2) pinyon-juniper woodland and mountain mahogany scrub; (3) mid-elevation and subalpine forests, woodlands, and meadows; and (4) alpine meadows and other alpine habitats varying from cliffs to plateaus (Service 2007, p. 3). Sierra Nevada bighorn sheep prefer Great Basin scrub and alpine communities due to their visual openness. Because of the aridity of the eastern slope of the Sierra Nevada, many of the mid-elevation vegetation communities have some locations near precipitous rocks with sparse plant cover that allow use by bighorn sheep (Wehausen 1980, pp. 18–25, 80–100). The extreme visual openness and the steep, rocky nature of alpine environments in the Sierra Nevada provide large expanses of habitat broken by canyons containing forests and willow stands. These areas of forests and willow stands are unlikely to be used by bighorn sheep. In contrast, low elevation winter habitat has been limited to small areas where topographic and visual features are suitable (Riegelhuth 1965, pp. 34–38; McCullough and Schneegas 1966, pp. 71–72, 74–75; Wehausen 1979, pp. 36–53; 1980, pp. 81–88). Large expanses lacking precipitous escape terrain can represent substantial barriers to movement (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5).

Male and female bighorn sheep commonly live in separate groups during much of the year, and often occupy different habitats (Geist and Petocz 1977, pp. 1,802–1,803; Bleich *et al.* 1997, pp. 7–14, 22–34, 36–42; Wehausen 1980, p. 109). In the Sierra Nevada, both sexes may share common winter ranges, but they become more segregated as spring nears (Wehausen 1980, pp. 112–113). During winter, bighorn sheep occupy high, windswept ridges if forage is available or move to lower elevation sagebrush-steppe habitat (as low as 4,790 ft (1,460 m)) to escape deep winter snows and find nutritious forage. In winter, they show a preference for south-facing slopes where snow melts more readily (Jones 1950, pp. 44–45; McCullough and Schneegas 1966, p. 71; Wehausen 1980, pp. 86–87). During summer, the two sexes utilize different habitats, with females restricted largely to alpine environments along the crest and males often at somewhat lower elevations in subalpine habitats (Wehausen 1980, pp. 112–113). Males again join females during the breeding season in late fall. Both males and females will inhabit open slopes where the area is rough, rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5).

An indication of winter and summer range size for male and female Sierra Nevada bighorn sheep was provided by Wehausen (1980) and Chow (1992). Wehausen (1980, p. 84) determined winter and summer range sizes for the Baxter and Williamson herds. He estimated that total winter range was 4.1 sq mi (10.65 sq km) and 5.1 sq mi (13.32 sq km), respectively. Summer range for ewes, lambs, and yearlings was estimated at 20.3 sq mi (52.63 sq km) and 5.9 sq mi (15.41 sq km), respectively. Fall range was estimated at 17.3 sq mi (44.81 sq km) and 5.1 sq mi (13.12 sq km), respectively. Chow (1992, p. 37) estimated home range size for the Lee Vining herd (winter/spring and summer/fall for rams and ewes) using the minimum convex polygon method (i.e., completely enclose all data points by connecting the outer locations in such a way as to create a convex polygon) from 1986 to 1989. During this period, ewes covered an area of 1.6 to 7.0 sq mi (4.2 to 18.1 sq km) during winter/spring, and rams covered an area of 4.6 to 10.8 sq mi (11.9 to 28.0 sq km). During this same period, ewes covered 3.7 to 8.6 sq mi (9.5 to 22.4 sq km) during summer/fall while rams covered 5.7 to 13.7 sq mi (14.7 to 35.4 sq km). The mean minimum convex polygon home range was 12.1 sq mi (31.4 sq km) for ewes and 32.8 sq mi (84.9 sq km) for rams from Mount Warren/Mount Gibbs, Wheeler, Sawmill, and Baxter herds (Sierra Nevada Bighorn Sheep Recovery Program 2004, pp. 9, 17).

Bighorn sheep have developed philopatric behaviors (reluctance to disperse from their home range) such that they are slow to colonize unoccupied habitat (Geist 1971, pp. 98–99; Cowan and Geist 1971, p. 81). This is likely an adaptation to the naturally fragmented habitats that bighorn sheep occupy. Both male and female Sierra Nevada bighorn sheep demonstrate seasonal philopatry (Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 7). While both males and females show a tendency to use the same ranges year after year, males show exceptions

and demonstrate long-distance movements (Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 7). Annual home range diameter provides an indication of the extreme distances bighorn sheep can travel. Maximum diameters for home ranges for female Sierra Nevada bighorn sheep from the Mount Warren/Mount Gibbs, Wheeler, and Baxter herds ranged from 3.95 to 10.41 mi (6.35 to 16.75 km); males from the Mount Warren/Mount Gibbs, Wheeler, and Sawmill herds ranged from 5.5 to 36.9 mi (8.9 to 59.4 km) (Sierra Nevada Bighorn Sheep Recovery Program 2004, pp. 9, 17).

Bighorn sheep exhibit a variety of behavioral adaptations to avoid predation. Bighorn sheep are primarily diurnal (Jones 1950, pp. 54–57; Krausman *et al.* 1985, pp. 24–26). Coupled with their strong reliance on keen eyesight to detect predators, diurnal behavior minimizes predation risks. Due to their keen eyesight and agility on rocky slopes, bighorn sheep, in general, select open habitats that allow predator detection at distances great enough to allow time to reach steep, rocky terrain (escape habitat) (Wehausen 1980, p. 81). This precipitous, rocky terrain is generally near foraging and resting areas. Bedding areas are needed for resting or sleeping purposes. During the day, bedding areas are generally wherever the individual is feeding. Bedding areas are made in the open but not necessarily in a place with a view of the surrounding area; during the night, bedding areas are generally among or near rugged, chuted cliffs (Jones 1950, p. 49). Bighorn sheep may venture a short distance away from rocky escape terrain to feed; the distance they venture from safer habitat varies and is apparently influenced by visual openness, wind, gender, season, and abundance of predators (Service 2007, p. 5).

Sites for Breeding, Reproduction, and Rearing of Offspring

In the Sierra Nevada, ewes and rams come together in late fall or early winter (November and December) (Jones 1950, pp. 63–64; Cowan and Geist 1971, p. 64; Wishart 1978, p. 165) to breed, usually at high elevations. Bighorn sheep generally give birth to single young (Wishart 1978, p. 165). Most bighorn sheep births in the Sierra Nevada occur in May and June (Wehausen 1980, p. 94; 1996, p. 475). Lambing habitat is in areas of precipitous rocks away from trees (Wehausen 1980, p. 95), providing safe areas from predators. Ewes with newborn lambs are solitary for a short period of time before joining nursery groups.

Mortality Factors

Bighorn sheep die from a variety of causes including predation, disease, and accidents. Various predators, including wolves (*Canis lupus*), mountain lions (*Felis concolor*), coyotes (*Canis latrans*), bobcats (*Lynx rufus*), and golden eagles (*Aquila chrysaetos*) kill wild sheep in North America (Cowan and Geist 1971, p. 75; Bleich 1999, p. 283). Jones (1950, pp. 67–68) listed golden eagles, mountain lions, coyotes, wolverines (*Gulo luscus*), bobcats, and ravens (*Corvus corax*) as likely predators of Sierra Nevada bighorn sheep, but thought none of these predators caused anything except small losses on the population under normal circumstances. He thought predation overall was light except during abnormally unfavorable winters. In recent years in the Sierra Nevada, mountain lions have been the primary predator of bighorn sheep, accounting for 96 percent of losses attributed to predation (Service 2007, p. 9). Of 147 bighorn sheep deaths recorded in the Sierra Nevada from 1975 to 2000, a minimum of 54.5 percent could be attributed to predation (Service 2007, p. 9).

Numerous diseases of bighorn sheep have been documented (Bunch *et al.* 1999, pp. 209–237). Bighorn sheep show a high susceptibility to pneumonia, usually caused by bacteria of the genus *Pasteurella* (some species now called *Mannheimia*) (Post 1971, pp. 98–101). Pneumonia caused by *Pasturella* alone, or with other pathogens, is an important disease threat for bighorn sheep (Bunch *et al.* 1999, p. 210). Lungworms of the genus *Protostrongylus* can be important contributors to pneumonia and mortality in bighorn sheep in the Rocky Mountains (Forrester 1971, p. 158; Woodard *et al.* 1974, pp. 773–774). Bighorn in the Sierra Nevada carry *Protostrongylus* lungworms, but parasite loads have been too low to be considered a management concern (Wehausen 1980, p. 191).

Although die-offs of bighorn sheep due to disease have occurred unrelated to domestic sheep (Miller *et al.* 1991, pp. 534–540), a substantial amount of circumstantial evidence is available that indicates that contact with domestic sheep is associated with respiratory disease outbreaks resulting in significant morbidity and mortality in wild bighorn sheep (Martin *et al.* 1996, pp. 72, 74). The history of bighorn sheep in the United States provides numerous examples of major die-offs following believed contact with domestic sheep (Foreyt and Jessup 1982, pp. 163–164, 166; Singer *et al.* 2001, p. 1,352; Coggins 2002, pp. 166–170), and these pneumonia epizootics can extirpate entire populations (Martin *et al.* 1996, pp. 72, 75). Experimental evidence indicates that bighorn sheep can suffer mortality from pneumonia after being in contact with domestic sheep (Foreyt 1989, p. 342; Callan, *et al.* 1991, pp. 1,054–1,055). Diseases transferred through contact with domestic sheep are suspected to have played a major role in the disappearance of certain bighorn sheep herds in the Sierra Nevada beginning about 1870 (Wehausen 1988b, p. 100).

The outcome of contact between the two species likely depends on the exposure history and immunity status of both species. The onset of pneumonia in affected bighorn sheep may be delayed by days or weeks after the initial contact with domestic sheep, and the problem may not be detected for months after infection in isolated bighorn sheep herds. Those individuals that survive, especially wandering rams, can transmit pathogens to nearby populations. Lambs born to surviving ewes can experience low survival rates for 3 to 5 years after the initial outbreak (Foreyt 1990, p. 100; Coggins and Matthews 1992, Ward *et al.* 1992, Foreyt 1995, Hunter 1995a cited in Schommer and Woolever 2001, p. 3). It is not possible to predict which contacts with domestic sheep might result in disease transmission to bighorn sheep, nor which bighorn sheep individuals could be susceptible. Contact can occur due to stray domestic sheep entering bighorn sheep habitat, or bighorn sheep coming into contact with domestic sheep.

Many early die-offs of bighorn sheep, including some in the Sierra Nevada, were attributed to scabies contracted from domestic sheep (Jones 1950, p. 69; Buechner 1960, p. 111). In 1987, Clark *et al.* (1988, p. 13) found scabies in three desert bighorn sheep in California east of the Sierra Nevada. In a large sampling of 50 populations of bighorn sheep in California between 1980 and 1990, 25 populations were designated as scabies-positive because at least one seropositive animal occurred at the low or high cutoff values, though no clinical evidence of scabies was noted (Mazat *et al.* 1992, pp. 543–545).

Other infectious diseases may be of concern for bighorn sheep in selected instances. Domestic goats are occasionally used as pack animals in the back country or for brush control. This use could cause concern if it occurs in or near bighorn sheep habitat. For example, a recent outbreak of infectious keratoconjunctivitis (inflammation of the eye) linked to domestic goats resulted in blindness and several deaths

(exacerbated by the blindness) in bighorn sheep in Arizona, demonstrating the risk of disease outbreak in bighorn sheep from interactions with domestic goats (Heffelfinger 2004, cited in Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 2).

Sierra Nevada bighorn sheep remaining at high elevations year-round likely contributed to population losses over winter (Wehausen 1996, pp. 474–477). Those losses included losses in snow avalanches (Service 2007, p. 10). A survey of the Wheeler Ridge herd during the heavy winter of 1995 found 12 sheep had died in a single snow avalanche (Torres *et al.* 1996, p. 28).

Metapopulation Structure

Within mountain ranges like the Sierra Nevada, bighorn sheep habitat is patchy and the population structure is one of natural fragmentation (Bleich *et al.* 1990, p. 384). This fragmentation has led to the application of a broad landscape approach to their population ecology which groups geographically distinct herds into metapopulations, or networks of interacting herds (Schwartz *et al.* 1986, pp. 182–183; Bleich *et al.* 1990, p. 386). This approach considers long-term viability not of individual herds but rather of entire metapopulations; thus, both genetic and demographic factors are considered. Decreasing population sizes, over time, can lead to decreasing levels of heterozygosity (presence of different forms of a gene at a particular location on a chromosome) that may have negative demographic effects through inbreeding depression (Lande 1988, p. 1,456) and loss of adaptability. A small amount of genetic exchange among herds by movements of males can counteract inbreeding and associated increases in homozygosity (presence of identical forms of a gene at a particular location on a chromosome) that might otherwise develop within small, isolated populations (Schwartz *et al.* 1986, p. 185). Males have a much greater tendency than females to explore new ranges. This tendency is likely attributed to males searching for females with which to breed. If geographic distances between female groups within metapopulations are not great, gene migration by males occurs readily. In the absence of such a metapopulation structure, populations will be isolated. Because the distribution of bighorn sheep in the Sierra Nevada is naturally fragmented, maintenance of migration corridors is important to allow for genetic exchange between herd units. In the Sierra Nevada this exchange may be more difficult because the metapopulations occur mostly in a linear geographic distribution pattern; thus, fewer populations may have provided sources of colonists (Service 2007, p. 34).

Substructuring also can occur within what are often thought of as single herds of bighorn sheep (Festa-Bianchet 1986, pp. 327–330; Andrew *et al.* 1997, pp. 74–75; Rubin *et al.* 1998, pp. 543–548). Such substructuring is defined by separate home range patterns. Although demonstrated more with females, it can occur in both sexes. For example, what was once considered the Mount Baxter herd is now recognized as two herds, Mount Baxter and Sawmill Canyon.

Another important long-term process in metapopulation dynamics is the balance between rates of natural extinction and colonization among populations. Colonization rates must exceed extinction rates for a metapopulation to persist (Hanski and Gilpin 1991, pp. 8–9). This balance has not occurred for Sierra Nevada bighorn sheep since about 1850 due to the high rate of local extinctions resulting in an increasingly fragmented distribution. In addition to fragmentation from past extinctions, remaining herds are small, isolated groups of bighorn sheep. Because of their small population size, these small groups are more vulnerable to extirpation due to random, naturally occurring events, disease, or predation (Shaffer 1987, pp. 71–73; Meffe and Carroll 1994, pp. 190–197; Service 2007, p. 7).

Food and Nutritional Requirements

Bighorn sheep are ungulates that consume a wide variety of plant species. Due to a large rumen and reticulum relative to body size, they have flexibility in the plants they consume which include graminoids (grasses, sedges, and rushes) in different phenological stages (Hanley 1982, p. 148). Bighorn sheep consume a wide variety of plant species. While they prefer grasses, sedges, and forbs, different browse species become important food during the fall and winter (Wishart 1978, p. 167).

Bighorn sheep exhibit seasonal changes in habitat use due to seasonal changes in resource availability, habitat and resource requirements. Sierra Nevada bighorn sheep rarely utilize surface water; instead, these bighorn sheep generally obtain moisture from their forage or the occasional consumption of snow. Altitudinal migration by Sierra Nevada bighorn sheep allows them to maximize nutrient intake during the year (Wehausen and Hansen 1988, pp. 256–257, 265–267; Wehausen 1996, pp. 476–477), as the relationship between elevation and temperature (Major 1977, pp. 44–45) influences plant growth (Wehausen 1980, p. 86–91, 133–135). In general, temperatures decrease with increasing altitude (Major 1977, p. 44). In the Sierra Nevada, every 56 ft (17 m) of elevation gain causes a 1 day delay in the onset of plant growth (Wehausen and Hansen 1988, p. 257). Bighorn sheep are able to take advantage of early spring growth (usually cold-season grasses) and then later change their diet to include warm-season plants that may have higher nutrient concentrations than grasses (Wehausen and Hansen 1988, p. 257). Sierra Nevada bighorn sheep use low-elevation ranges extensively in winter and early spring, alpine ranges in summer and fall, and some intermediate ranges during transition periods (Wehausen 1980, pp. 80–100).

In the following section plant nomenclature has been updated to conform to treatments in Hickman (1993). Common names generally conform to those given in Hickman (1993) or Abrams *et al.* (1923–1960). Cited scientific names are retained in brackets for ease of reference. The following plant species were found to be important winter/spring forage for Sierra Nevada bighorn sheep: *Achnatherum speciosum* [*Stipa speciosa*] (desert needlegrass), *Eriogonum fasciculatum* (California buckwheat), *Artemisia tridentata* (sagebrush), *Ephedra viridis* (green ephedra), *Keckiella breviflora* (gaping keckiella), *Purshia glandulosa* (Mojave antelope bush), *P. tridentata* (northern antelope bush), and *Ceanothus cordulatus* (mountain whitethorn) (Wehausen 1980, p. 87). McCullough and Schneegas (1966, p. 72) and Riegelhuth (1965, p. 38) provide similar lists of plant species observed consumed by Sierra Nevada bighorn sheep during winter or summer (Table 1). Wehausen (1980, pp. 124–126) provides a list of plants consumed by both sexes in summer (Table 1).

TABLE 1—PLANT SPECIES OBSERVED CONSUMED BY SIERRA NEVADA BIGHORN SHEEP DURING SUMMER AND FALL MONTHS

[McCullough and Schneegas 1966, p. 72; Riegelhuth 1965, p. 38; Wehausen 1980, p. 124–126]

Sex	Season	Scientific name	Common name
Ewes and Lambs	Summer and fall	*Polemonium eximium*	Sky pilot.
		Hulsea algida	Alpine hulsea.
		Carex helleri	Heller's sedge.
		C. rossii	Ross' sedge.
		C. leporinella	Sierra hare sedge.
		Elymus elymoides ssp. *elymoides [Sitanion hystrix]*	Bottlebrush squirreltail.
		Phacelia hastata [frigida]	Timberline phacelia.
		Silene sargentii	Sargent's campion.
		Aquilegia pubescens	Coville's columbine.
		Ivesia pygmaea	Dwarf ivesia.
		Juncus parryi	Parry's rush.
		Achnatherum [Stipa] pinetorum	Pine needlegrass.
		Lupinus formosus	Summer lupine.
Rams	Summer and fall	*Juncus parryi*	Parry's rush.
		Carex filifolia var. *erostrata [exserta] C. rossii*	Ross' sedge.
		C. aurea	Golden-fruited sedge.
		Luzula comosa	Hairy wood rush.
		Poa cusickii ssp. *epilis [epilis]*	Mountain bluegrass.
		Elymus elymoides ssp. *elymoides [Sitanion hystrix]*	Bottlebrush squirreltail.
		Danthonia intermedia	Mountain oatgrass.
		Achnatherum lemmonii [Stipa columbiana]	Lemmon's stipa.
		Eriogonum lateens	Onion-flowered eriogonum.
		Trifolium monanthum	Carpet clover.
Both sexes	Summer	*Holodiscus microphyllus*	Small-leaved cream bush.
		Jamesia Americana	Cliff bush.
		Ribes montigenum	Alpine prickly currant.
		Potentilla fruticosa	Shrubby cinquefoil.

In addition to forage needs, mineral licks are specific sites where bighorn sheep have access to important minerals to meet nutritional needs. These licks contain minerals such as sodium, calcium, iron, and phosphorus. Sites are generally found in granite outcroppings in the Sierra Nevada. Some known areas occur in the vicinity of Gilcrest Peak and Tioga Road (Chow 1992, p. 52), Baxter Pass (Jones 1950, p. 63; Hicks and Elder 1979, p. 911; Wehausen 1980, p. 151), and Mayfield Canyon (Stephenson 2007, p. 1).

Historical and Geographic Distribution of the Species

Historically, the range of the Sierra Nevada bighorn sheep included the eastern slope of the Sierra Nevada, and for at least one subpopulation, a portion of the western slope, from Sonora Pass in Mono County to Walker Pass in Kern County, a total distance of approximately 215 mi (346 km) (Jones 1950, pp. 33–35; Wehausen 1979, p. 1). The extant range of the Sierra Nevada bighorn sheep begins in the Lee Vining area in Mono County and extends south to the Mount Langley area in Inyo County. This is a linear distance of approximately 110 mi (177 km).

All currently occupied units that are designated were occupied at the time of listing and contain the physical and biological features essential to the conservation of the subspecies and may require special management considerations or protection. The areas designated as critical habitat that are currently unoccupied were also not occupied at the time of listing; however, these areas are representative of the historical and geographical distribution of the Sierra Nevada bighorn sheep and were all historically occupied (Ober 1914, p. 125; Ober 1931, p. 32; Jones 1950, pp. 35, 38–40; Buechner 1960, p. 69; Barrett 1965, p. 43; Riegelhuth 1965, p. 35; Dunaway 1971, p. 19; Wehausen *et al.* 1987, p. 66; Wehausen 1988a, pp. 100–101; Wehausen 1988b, p. 100; Berger 1990, p. 94). Furthermore, we have determined that all designated unoccupied habitat is essential for the conservation of the subspecies and will decrease the degree of fragmentation within the current geographic distribution of the subspecies. For further information on occupancy status see Table 3 and the Unit Descriptions sections below.

Primary Constituent Elements for Sierra Nevada Bighorn Sheep

Under the Act and its implementing regulations, we are required to identify the known physical and biological features within the geographical area occupied by Sierra Nevada bighorn sheep at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. The physical and biological features are those primary constituent elements (PCEs) laid out in a specific spatial arrangement and quantity to be essential to the conservation of the subspecies. All areas designated as critical habitat for Sierra Nevada bighorn sheep are within the subspecies' historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies, we have determined that the Sierra Nevada bighorn sheep's PCEs are:

(1) Non-forested habitats or forest openings within the Sierra Nevada from 4,000 ft (1,219 m) to 14,500 ft (4,420 m) in elevation with steep (greater than or equal to 60 percent slope), rocky slopes that provide for foraging, mating, lambing, predator avoidance, and bedding and that allow for seasonal elevational movements between these areas.

(2) Presence of a variety of forage plants as indicated by the presence of

grasses (e.g., *Achnanthera* spp.; *Elymus* spp.) and browse (e.g., *Ribes* spp.; *Artemisia* spp., *Purshia* spp.) in winter, and grasses, browse, sedges (e.g., *Carex* spp.) and forbs (e.g., *Eriogonum* spp.) in summer.

(3) Presence of granite outcroppings containing minerals such as sodium, calcium, iron, and phosphorus that could be used as mineral licks in order to meet nutritional needs.

We determined that these PCEs contained within the designated critical habitat units discussed below provide for the physiological, behavioral, and ecological requirements of the Sierra Nevada bighorn sheep. The first PCE provides for the general biotic communities that are known to support Sierra Nevada bighorn sheep habitat in the Sierra Nevada of California. Sierra Nevada bighorn sheep are not known to occur outside of the communities and elevations described in this PCE. This PCE further provides the components necessary for foraging (summer and winter), breeding, lambing, predator avoidance, and bedding, and allows for seasonal elevational movements among these areas.

The second PCE describes the types of food necessary to meet the biological needs of the Sierra Nevada bighorn sheep related to seasonal range movements. Altitudinal migration by Sierra Nevada bighorn sheep allows them to maximize nutrient consumption during the year (Wehausen and Hansen 1988, pp. 256–257, 265–267; Wehausen 1996, pp. 476–477), as the relationship between elevation and temperature (Major 1977, pp. 44–45) influences plant growth (Wehausen 1980, pp. 86–91, 133–135), as discussed earlier. Wehausen (1980, p. 86) found winter diet quality was improved with warmer winter temperatures that aided plant growth; summer diet quality was improved, apparently, by the amount of snowfall the previous winter, which may influence soil moisture for alpine plants (Wehausen 1980, p. 133).

The third PCE provides for additional nutritional needs. Mineral licks provide necessary nutrients, important in meeting dietary requirements.

This final designation is designed for the conservation of the PCEs necessary to support the life history functions of the subspecies and the areas containing those PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. Some units contain all of these PCEs and support multiple life processes, while some units contain only a portion of these PCEs, those necessary to support the species' particular use of that habitat. Because not all life history functions require all the PCEs, not all critical habitat units will contain all the PCEs.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas occupied by the subspecies at the time of listing contain the features that are essential to the conservation of the subspecies, and whether these features may require special management considerations or protection. As described in more detail in the unit descriptions below, we find that the PCEs within the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection due to threats to the Sierra Nevada bighorn sheep or its habitat. All of these units occur almost exclusively on Federal lands managed by the Forest Service, National Park Service, and the Bureau of Land Management. Management considerations and protection of the essential features may include review of various activities proposed in Sierra Nevada bighorn sheep habitat that are authorized, funded, or carried out by these agencies. These activities can include habitat enhancement projects to reverse fire suppression effects, development activities, livestock grazing, mining actions, and recreational activities. In addition, because all of the herds are relatively small, management actions to protect Sierra Nevada bighorn sheep habitat from catastrophic, naturally occurring events (e.g., wildfires, avalanches) may be necessary.

Fire suppression can modify the structure of Sierra Nevada bighorn sheep habitat by allowing taller vegetation, such as trees, to become established, resulting in cover for predators. Mountain lions, a primary predator of Sierra Nevada bighorn sheep, use vegetative cover and terrain to conceal themselves prior to attacks. Fires may have burned more frequently in the past in bighorn sheep habitat. Old ground and aerial photographs show habitats in the eastern Sierra Nevada had little vegetation tall enough to obstruct the vision of bighorn sheep; pinyon pine woodlands have mostly developed since 1860 (Miller and Tausch 2001, pp. 15–16). Continued suppression of fires in Sierra Nevada bighorn sheep range is a threat, as habitat succession alters the abundance of suitable bighorn sheep habitat and increases bighorn sheep vulnerability to mountain lion predation (Torres *et al.* 1996, p. 29). Performing habitat enhancements, such as prescribed burning, or enabling ''let burn'' policies, helps to provide open habitats. Open habitats will help to reduce predation by decreasing the effectiveness of ambushing by predators (such as mountain lions) from cover. Providing more open habitat will allow more opportunity for connectivity among herd units and likely promote greater gene flow to conserve genetic diversity. According to Johnson *et al.* (2005, p. 34), all of the herd units would benefit from forest reduction in winter range; those units that would incur the highest benefit are Units 8 and 10. Thus, the PCEs in all of the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection to reverse the impacts of fire suppression.

There is limited development within Sierra Nevada bighorn sheep habitat because most habitat occurs on Federal lands; however, there is some recreational development (e.g., resorts). There are several paved and unpaved roads that access Federal lands within Sierra Nevada bighorn sheep habitat. For example, State Highway 120 is located primarily between Units 1 and 2, but some sections lie within Unit 1. Bighorn sheep have been killed due to collisions with vehicles on this road (65 FR 28; January 3, 2000). State Route 158 and Road 16S02 occur in or adjacent to portions of Units 2 and 10, respectively. The PCE's in Units 1, 2, 4, and 10 require special management considerations or protection to address the impacts from development activities, including road construction and maintenance within Sierra Nevada bighorn sheep habitat.

Management of domestic livestock (sheep, goats, cattle) grazing practices that result in overgrazing or allow for contact between domestic sheep, domestic goats, and Sierra Nevada bighorn sheep is a threat. Domestic livestock could compete with Sierra Nevada bighorn sheep for forage at some level in designated critical habitat units. As the number of Sierra Nevada bighorn sheep is still limited, this may not be a concern currently on those allotments within or near critical habitat. However, some areas can be especially important foraging areas for Sierra Nevada bighorn sheep during winter. After domestic livestock grazing has been completed and they have been removed from the allotment, regrowth of forage at higher elevations can be a slow process. This may result in less forage being available for Sierra Nevada bighorn sheep during the winter at these higher elevations.

Although die-offs of bighorn sheep due to disease have occurred unrelated to domestic sheep (Miller *et al.* 1991, pp. 534–540), a major contributing

factor responsible for the decline of Sierra Nevada bighorn sheep populations over the years is thought to be the introduction of diseases by domestic livestock (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5; 65 FR 25, January 3, 2000).

Clifford *et al.* (2007) used available spatial, demographic, and disease data to assess the risk for and potential impact of a respiratory disease outbreak in Sierra Nevada bighorn sheep due to contact with domestic sheep. They evaluated the risk of disease transmission between the two species by determining the probabilities of interspecies contact from Sierra Nevada bighorn sheep monitoring data and domestic sheep grazing data. A prediction of short-term population-level impacts of a respiratory disease outbreak was made using an epidemiologic simulation model. While acknowledging the study's limitations, Clifford *et al.* (2007, p. 18) indicate concern for the probability of a respiratory disease case occurring from disease transmission between domestic sheep and Sierra Nevada bighorn sheep, especially in the northern part of bighorn sheep range.

Domestic grazing allotments within the vicinity of Sierra Nevada bighorn sheep habitat should be reviewed and activities should be modified as necessary to prevent competition and contact between the domestic livestock (sheep and goats) and bighorn sheep. These modifications could include such variables as the number of domestic livestock allowed on an allotment, where the domestic livestock may graze on an allotment, and the length and timing of the grazing period. These variables can assist in reducing resource competition as well as reducing contact between domestic sheep (and goats) and bighorn sheep. The PCEs within Units 1, 2, and 4 may require special management considerations or protection to address the potential impacts of domestic sheep and goat grazing within Sierra Nevada bighorn sheep habitat. The PCEs within Units 1, 2, 3, 4, 5, 8, 10, and 12 may require special management considerations or protection to address the potential impacts of cattle grazing within Sierra Nevada bighorn sheep habitat. While we are addressing the potential for contact and the possible transmission of disease to Sierra Nevada bighorn sheep due to the presence of domestic sheep or goats within critical habitat, it is not strictly a habitat-related threat. The concern for disease transmission from domestic sheep and goat grazing in proximity to Sierra Nevada bighorn sheep did not serve as the foundation for this critical habitat designation.

Patented mining claims occur within habitat used by the Sierra Nevada bighorn sheep, but the area of the claims is small. Mining activities and associated facilities threaten bighorn sheep by causing the loss of vegetation structure required for foraging activities; the destruction of habitats used for escape, bedding, lambing, or connectivity between ranges; and the disturbance due to ongoing mining activities. Disturbance could modify bighorn sheep behavior or cause them to flee an area. Mining occurs within the habitat of Sierra Nevada bighorn sheep in Unit 4. These mines are underground, thus reducing some impacts of habitat loss. PCEs within this unit may require special management considerations or protection to address mining and associated facility development impacts within Sierra Nevada bighorn sheep habitat.

It remains unclear how significantly Sierra Nevada bighorn sheep may be affected by human disturbance (Jones 1950, pp. 71–72; Dunaway 1971, p. 19; Wehausen *et al.* 1977, p. 31; Hicks and Elder 1979, p. 914; Wehausen 1980, pp. 200–201; MacArthur *et al.* 1982, p. 356; Papouchis *et al.* 2001, pp. 579–580). Additional investigations are needed to identify areas of conflict as situations arise where the increased presence of humans could be detrimental to the Sierra Nevada bighorn sheep or its habitat. These areas of use could displace Sierra Nevada bighorn sheep from important habitats.

Increases in human uses of bighorn sheep habitat, including recreational activities such as rock and ice climbing, mountaineering, ski touring, hiking, camping, pack station establishment, snowmobiling, and off-road vehicle use may disturb Sierra Nevada bighorn sheep in key areas. This could result in abandonment of these areas or disruption of feeding, resulting in reduced nutrient intake. A cost in biological energetics could also occur due to flight. These losses could translate into reduced reproductive success. Impacts to the habitat could occur through trampling and reduced vegetation structure due to grazing by pack animals. The presence of dogs accompanying recreationists is also a concern in bighorn sheep habitat as dogs may cause strong alarm reactions by bighorn sheep (MacArthur *et al.* 1982, p. 356).

Bighorn sheep can be conditioned or habituated to human activities such as trail hiking, where bighorn sheep are able to watch humans approaching from a distance and from below (Hicks and Elder 1979, p. 914), road traffic (Papouchis *et al.* 2001, p. 580), or predictable activities such as photographers taking pictures near a road (MacArthur *et al.* 1982, p. 356). This conditioning can minimize alarm reactions. Other individuals have shown avoidance of roads (Papouchis *et al.* 2001, p. 580). Particular groups (e.g., ewe-lambs) may demonstrate a more extreme alarm reaction at a greater distance than other groups when encountered from above as their path is blocked (Wehausen *et al.* 1977, p. 31). Review of recreational activities should take into account various factors such as location, ground disturbance, timing of year, duration, and noise level to determine if impacts may occur to Sierra Nevada bighorn sheep and its habitats.

The PCEs within the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection to protect Sierra Nevada bighorn sheep and its habitat from recreational activities. While recreation could be a threat factor throughout an occupied herd unit, it is more likely in some portions of units due to their inclusion of these higher use areas or their proximity to these areas. These areas include the Virginia Lakes, the Lundy Lake, the Saddlebag Lake, and the Lee Vining Canyon recreational areas associated with Unit 1; the Lee Vining Canyon recreational area associated with Unit 2; the Rock Creek recreational area associated with Unit 4; the Baxter Pass and Onion Valley recreational area associated with Unit 7; and the Whitney Portal and Trailhead and the Cottonwood Lakes recreational areas associated with Units 8 and 10.

Management actions to protect Sierra Nevada bighorn sheep habitat from catastrophic, naturally occurring events may be necessary. Events such as wildfires and avalanches could temporarily destroy large areas that provide summer or winter foraging habitat.

Criteria Used To Identify Critical Habitat

We are designating critical habitat in areas that were occupied by the subspecies at the time of listing and that contain PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the subspecies. Some lands contain only a portion of the PCEs necessary to support the particular use of that habitat during that portion of the life process. We are also designating critical habitat in specific unoccupied areas that were not occupied by the subspecies at the

time of listing. We have determined that these areas, which were historically occupied, are essential to the conservation of the subspecies.

In our analysis, we reviewed existing data to determine the distribution of areas occupied by the subspecies at the time of listing. We also reviewed available information related to the habitat requirements of the subspecies. We used information from literature cited in the final listing rule (65 FR 20; January 3, 2000), the final recovery plan, site records, reports prepared by CDFG, and other published scientific literature.

We used the following criteria to select areas occupied by the Sierra Nevada bighorn sheep at the time of listing for inclusion in critical habitat:

(a) Areas occupied by the Sierra Nevada bighorn sheep at the time of listing (1999–2000) as indicated in the final listing rule (65 FR 20; January 3, 2000). In the final listing rule, we identified five subpopulations of Sierra Nevada bighorn sheep that existed: (1) Lee Vining Canyon (Mount Warren and Mount Gibbs Herd Units), (2) Wheeler Crest (Wheeler Ridge Herd Unit), (3) Mount Baxter (Sawmill Canyon and Mount Baxter Herd Units), (4) Mount Williamson (Mount Williamson Herd Unit), and (5) Mount Langley (Mount Langley Herd Unit) in Mono and Inyo counties, California (Wehausen 1999, pp. 1–7; 2000, pp. 1–6);

(b) Areas that are representative of the distribution of the Sierra Nevada bighorn sheep throughout the geographical range occupied at the time of listing with the goal of maintaining the subspecies' range of habitat and genetic variability; and

(c) Areas that allow for the continued existence of viable subpopulations under varying environmental conditions and that can serve as locations for source populations. The locations of all five subpopulations identified in the original listing rule continue to remain occupied today.

Current population estimates of the Sierra Nevada bighorn sheep in 2006 indicate 350 to 400 individuals occur throughout its range (Wehausen and Stephenson 2006, p. 7); this is an increase from the 125 individuals estimated at the time of listing (65 FR 20; January 3, 2000). Current individual herd numbers in the different subpopulations range from 8 to 113 individuals (Wehausen and Stephenson 2006, p. 7). Current occupancy of these herd units is supported by agency reports (Wehausen and Stephenson 2004, pp. 2–10; 2005, pp. 2–6; 2006, pp. 2–6); status reports (Wehausen 1999, pp. 1–7; 2000, pp. 1–6); and monthly CDFG monitoring reports based on GPS, telemetry, and monitoring data collected during 2001 through 2006. We have determined that the areas occupied at the time of listing continue to be occupied, contain the features essential to the conservation of the subspecies (possess one or more PCEs such that the area supports one or more of the Sierra Nevada bighorn sheep's life processes), and provide sufficient habitat to protect these populations.

In addition, we are designating critical habitat on lands that were historically occupied by the Sierra Nevada bighorn sheep, but were not occupied at the time of listing and are not currently occupied. These areas were all historically occupied within the past 90 years (Jones 1950, pp. 33–35) and are essential to the conservation of the subspecies. Based on the best available information, we have determined that without protection and management of these unoccupied areas, conservation of the subspecies will not be possible.

We applied each of the following criteria to select areas historically occupied, but not known to be occupied at the time of listing by the Sierra Nevada bighorn sheep, for inclusion in critical habitat:

(1) Areas where habitat contains sufficient PCEs (e.g., characteristics such as non-forested, steep, rocky slopes and foraging areas) to support life history functions.

(2) Areas where habitat has been occupied by the subspecies. In some areas this was as long ago as 90 years (Jones 1950, pp. 33–35). In all of the areas the habitat has not changed appreciably in size or quality during that time.

(3) Areas where appropriate habitat for Sierra Nevada bighorn sheep has been predicted by CDFG based on Resource Selection Probability Functions modeling (Johnson *et al.* 2005) (i.e., contains habitat with the PCEs and additional, more specific characteristics that allow for a range of the subspecies' biological needs, such as sites for feeding).

(4) Areas where there is potential for reoccupation by the subspecies, either through natural means of dispersal from currently occupied areas or by future re-introduction efforts.

(5) Areas that are geographically separated from currently occupied units by approximately 0.5 to 8 mi (0.8 to 12.9 km) to provide redundancy of habitat in the event of a natural catastrophe removing habitat (PCEs) from currently occupied units.

The designation of these unoccupied areas would decrease the degree of fragmentation within the current geographic distribution of the Sierra Nevada bighorn sheep. We believe that the designation of these additional areas is essential for the conservation of the subspecies because:

(1) Population increases, either through natural means or reintroductions into the additional units, are expected to increase the viability of the herds within occupied areas, as well as the existence of the Sierra Nevada bighorn sheep as a whole (i.e., increase the likelihood of persistence at the local population level and of this subspecies rangewide).

(2) The Sierra Nevada bighorn sheep is recognized as a unique subspecies (Wehausen and Ramey 2000, p. 156; Wehausen *et al.* 2005, p. 217), and the additional units will serve to decrease the degree of fragmentation of the current geographic distribution of the sheep (i.e., increase connectivity between areas known to be currently occupied). Fragmented distribution across the landscape reduces the connectivity between subpopulations. If small populations are isolated and remain small, there is an increased risk of genetic drift and risk to persistence due to naturally occurring events (Gilpin and Soule 1986, pp. 25, 33). Maintenance of genetic variation is important in reducing inbreeding depression and the ability to respond to environmental changes over time, especially in small populations (Schwartz *et al.* 1986, pp. 180–186; Lande 1988, pp. 1,456–1,457). Establishing additional units or subpopulations in unoccupied areas would fill in range gaps between the other occupied units and/or subpopulations. All of the unoccupied units lie within 8 mi (12.9 km) of an occupied area. This would reduce migration distances and increase the opportunity for genetic exchange between the subpopulations. The addition of these unoccupied units would ensure the full geographic distribution of the Sierra Nevada bighorn sheep is represented.

(3) The current overall population size of the Sierra Nevada bighorn sheep is small, and it must increase to ensure the long-term survival of this subspecies, as small populations are more vulnerable to extinction (Meffe and Carroll 1994, pp. 190–197; Shaffer 1987, pp. 71–73). While the occupied units provide habitat for current populations, additional units would provide habitat for population growth either through natural means or through reintroductions. Population increase in the additional units would assist in reducing the risk of extinction of the subspecies through stochastic events,

such as wildfire, disease (Bunch *et al.* 1999, pp. 209–237), or avalanches (Torres *et al.* 1996, p. 28), as the current isolated populations are few in number, small in size, and at risk from such stochastic events. Establishing additional subpopulations, increasing a subpopulation's size, and increasing the overall distribution of subpopulations across the landscape are fundamental to reducing the significance of losing any single subpopulation.

We have determined that the unoccupied Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas, as identified in the final recovery plan (Service 2007, p. 41), are not essential for the conservation of the Sierra Nevada bighorn sheep. During the recovery team's efforts to finalize the recovery plan, an additional herd unit, Bubbs Creek, was included in the final recovery plan due to bighorn sheep occupying this area (Wehausen and Stephenson 2004, p. 5; Benz 2007, p. 1; Service 2007, p. 41). Though these four herd units are mentioned in the final recovery plan they were not considered to be essential in the plan. These four herd units are considered not essential for the following reasons:

(1) We believe that the 12 units we are designating as critical habitat provide the necessary habitat and area to ensure the viability and long-term survival of the Sierra Nevada bighorn sheep at the local and subspecies levels, as well as provide for sufficient resiliency, representation, and redundancy of the subspecies.

(2) There is uncertainty regarding whether viable Sierra Nevada bighorn sheep herds can become established in the Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas due to the lack of historical evidence regarding the number of animals that may have occurred in these areas and our limited understanding of the availability and connectivity between foraging habitats in these areas. Thus, there is a question as to whether there is a potential for reoccupation by the subspecies, either through natural means of dispersal or by future reintroduction efforts. As a result, these three herd unit areas do not meet our criterion number 4 for identification of critical habitat outlined above. Therefore, the Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas are not considered essential for recovery.

(3) Bighorn sheep were discovered in the Bubbs Creek Herd Unit area in 2001 and were likely a result of a recent colonization. This herd unit area is west of the crest of the Sierra Nevada where snowfall is much greater than the east side of the range. Because there are no historical records of bighorn sheep winter range in the Bubbs Creek area, there is uncertainty as to the long-term viability of this herd unit. Consequently, the Bubbs Creek Herd Unit area is not considered essential for recovery.

Further, our concern for disease transmission from domestic sheep to Sierra Nevada bighorn sheep is reduced because we are not including the unoccupied herd units as essential to the recovery of the subspecies. Twin Lakes and Green Creek overlap with portions of a few currently active domestic sheep allotment boundaries. Bubbs Creek and Coyote Ridge Herd Units do not occur near domestic sheep allotments. While the potential for disease transmission from domestic sheep and goat grazing in proximity to Sierra Nevada bighorn sheep is a management concern, it did not serve as the foundation for this critical habitat designation.

We delineated polygon boundaries for each unit for critical habitat designation within the Sierra Nevada bighorn sheep's historical range and around areas occupied at the time of listing, or known to have been historically occupied and considered essential for the conservation of the subspecies. We based our boundary delineation on the knowledge that bighorn sheep are naturally philopatric and fit a metapopulation model. Separate female groups tend to be geographically segregated, and these groups can be defined by separate home range patterns. The existing herds provided information related to home range and habitat use patterns. Low-elevation winter range habitat is an important, and apparently limiting, factor in the Sierra Nevada that occurs in disjunct patches. We defined unit boundaries around those patches and geographically connected habitat that provides visually open habitat on steeper slopes (Wehausen 2006, p. 1). We also considered factors such as knowledge of the range of elevations used by Sierra Nevada bighorn sheep, topographic features known to be needed by the subspecies, sighting records, published literature, and the expertise of bighorn sheep biologists regarding local conditions (high elevation, snow-free winter habitat; lower elevation, south or east-facing habitat; visual openness; and high elevation, summer habitat) during boundary delineation. In addition, a Resource Selection Probability Functions model for winter and summer habitat was developed that can quantitatively evaluate habitat conditions (Johnson *et al.* 2005). This modeling effort was used to support and refine unit boundaries (Wehausen 2006, p. 2) which contain the PCEs and additional, more specific characteristics. The model included variables such as elevation, slope, aspect, hillshade, terrain ruggedness, distance to escape terrain, and vegetation to determine visibility (Johnson *et al.* 2005, pp. 8–9). Pixels (smallest element of an image that can be individually processed in a video display system) in the study area that received a relative winter and summer probability of use value in the 90–100 percent quartile were considered winter and summer ranges. Each unit boundary surrounds the areas we consider to be winter and summer range, as well as areas necessary to provide connectivity between these ranges. These boundary lines translate onto the ground by roughly following elevation and geomorphic features. As one progresses from south to north along the Sierra Nevada, the lower boundary elevation of the units increases. The elevation of the boundary lines begins at a low of 4,000 ft (1,219 m) for Unit 12 (Olancha Peak) at the southern end of the Sierra Nevada. From this unit northward, the remaining units begin at a low elevation of 4,500 ft (1,372 m) or higher.

When determining critical habitat boundaries for this rule, we made every effort to avoid including developed areas such as lands covered by buildings, paved areas, and other structures that lack PCEs for the Sierra Nevada bighorn sheep. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the subspecies or its PCEs in adjacent critical habitat.

We designate critical habitat (7 units) on lands that we have determined were occupied at the time of listing that contain the physical and biological features essential for the conservation of the subspecies that may require special management considerations or protection, and additional areas (5 units) not occupied at the time of listing that we have determined to be essential to the conservation of the subspecies. The 12 units that we designate as critical habitat encompass about 417,577 ac (168,992 ha) within Tuolumne, Mono, Fresno, Inyo, and Tulare Counties, California. The designated units contain habitat that

supports biological and population-level functions of the Sierra Nevada bighorn sheep. A brief discussion of each unit designated as critical habitat is provided in the unit descriptions below.

Units both occupied and unoccupied at the time of listing are designated based on sufficient PCEs being present to support Sierra Nevada bighorn sheep life processes. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to support the Sierra Nevada bighorn sheep's particular use of that habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a HCP that identifies conservation measures that the permittee agrees to implement to minimize and mitigate the impacts of the taking on the species. We often exclude from designated critical habitat non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement under section 10(a)(1)(B) of the Act, where we determine that the benefits of exclusion outweigh the benefits of inclusion in accordance with section 4(b)(2) of the Act. There are no existing operative HCPs within the areas designated as critical habitat.

Final Critical Habitat Designation

We are designating 12 units as critical habitat for the Sierra Nevada bighorn sheep. The critical habitat areas described below constitute our best current assessment of areas determined to be occupied at the time of listing, that meet the definition of critical habitat for the Sierra Nevada bighorn sheep, and those additional areas that were not occupied at the time of listing but were found to be essential to the conservation of the Sierra Nevada bighorn sheep. The 12 areas designated as critical habitat are: Mount Warren, Mount Gibbs, Convict Creek, Wheeler Ridge, Taboose Creek, Sawmill Canyon, Mount Baxter, Mount Williamson, Big Arroyo, Mount Langley, Laurel Creek, and Olancha Peak.

The approximate area encompassed within each designated critical habitat unit is shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR SIERRA NEVADA BIGHORN SHEEP

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Mount Warren	Federal	35,279 (14,277)
	Private	568 (230)
	Local Government	165 (67)
2. Mount Gibbs	Federal	29,702 (12,020)
3. Convict Creek	Federal	36,497 (14,770)
	Private	17 (7)
4. Wheeler Ridge	Federal	80,568 (32,605)
	Private	398 (161)
5. Taboose Creek	Federal	28,805 (11,657)
6. Sawmill Canyon	Federal	30,508 (12,346)
7. Mount Baxter	Federal	32,198 (13,030)
	Private	22 (9)
8. Mount Williamson	Federal	32,560 (13,177)
9. Big Arroyo	Federal	24,987 (10,112)
10. Mount Langley	Federal	32,845 (13,292)
11. Laurel Creek	Federal	22,037 (8,918)
12. Olancha Peak	Federal	30,421 (12,311)
Subtotal	Federal	416,407 (168,518)
	Private	1,005 (407)
	Local Government	165 (67)
Grand Total *		417,577 (168,992)

* Columns may not sum exactly due to rounding of values.

TABLE 3—OCCUPANCY OF SIERRA NEVADA BIGHORN SHEEP BY DESIGNATED CRITICAL HABITAT UNIT

Unit	Occupied at time of listing?	Currently occupied?	Size of unit in acres (hectares)
1. Mount Warren	Yes	Yes	36,012 (14,574)
2. Mount Gibbs	Yes	Yes	29,702 (12,020)
3. Convict Creek	No	No	36,514 (14,777)
4. Wheeler Ridge	Yes	Yes	80,966 (32,766)
5. Taboose Creek	No	No	28,805 (11,657)
6. Sawmill Canyon	Yes	Yes	30,508 (12,346)
7. Mount Baxter	Yes	Yes	32,220 (13,039)
8. Mount Williamson	Yes	Yes	32,560 (13,177)
9. Big Arroyo	No	No	24,987 (10,112)
10. Mount Langley	Yes	Yes	32,845 (13,292)
11. Laurel Creek	No	No	22,037 (8,918)
12. Olancha Peak	No	No	30,421 (12,311)
Total *			417,577 (168,992)

* Columns may not sum exactly due to rounding of values.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Sierra Nevada bighorn sheep, below.

Universal Transverse Mercator (UTM) coordinates and more precise legal descriptions of each unit are provided in the Regulation Promulgation section.

Sierra Nevada bighorn sheep throughout their range utilize elevations from about 4,790 ft (1,460 m) to above 14,100 ft (4,300 m) (Wehausen 1980, pp. 3, 82). As described in the Criteria Used to Identify Critical Habitat section above, we used modeling to further refine and clarify our knowledge of those areas that may be essential to the conservation of the subspecies. Based on these modeling efforts, Sierra Nevada bighorn sheep habitat is known to be available as low as elevation 4,000 ft (1,219 m) in the southern portion of its range (Johnson *et al.* 2005). Within this elevational range, a variety of vegetation communities occur including (from lowest to highest elevations): Sagebrush-bitterbrush-bunchgrass scrub; pinyon-juniper woodland and mountain mahogany scrub; mid-elevation and subalpine, meadows, forests, and woodlands; and alpine meadows and other habitats from cliffs to plateaus (Service 2007, p. 3). All units contain one or more of these habitat types in varying amounts.

Unit 1: Mount Warren

Unit 1 consists of approximately 36,012 ac (14,574 ha) in Tuolumne and Mono Counties. Unit 1 is generally located within an area bounded on the east by U.S. Highway 395 (located about 1 mi (1.6 km) away), on the south by SR 120, on the north by Green Creek, and on the west by the ridge connecting Ragged Peak in the south to Camiaca Peak in the north. It is located northwest of the town of Lee Vining. Land ownership within the unit includes approximately 35,279 ac (14,277 ha) of Federal land, 165 ac (67 ha) of Los Angeles Department of Water and Power lands, and 568 ac (230 ha) of other private land. The Federal land is administered by the Humboldt-Toiyabe and Inyo National Forests, Yosemite National Park, and Bureau of Land Management.

Unit 1 begins at a low elevation of about 7,500 ft (2,286 m) on the eastern slope and rises to about 12,000 ft (3,658 m) on the west. It encompasses some areas from 12,000 to over 14,000 ft (3,658–4,267 m). It is the northernmost unit designated as critical habitat for the Sierra Nevada bighorn sheep. This unit was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 6, 8; 2000, pp. 5–7) and is currently occupied with a minimum population estimate of 26 individuals (Wehausen and Stephenson 2006, p. 7). Unit 1 contains all of the features essential to the conservation of the Sierra Nevada bighorn sheep. It contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements; contains a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5); and contains mineral licks (PCE 3) (Chow 1992, p. 52). This unit has good high- and low-elevation winter habitat in the area north of Lee Vining Canyon. Mount Warren has a minimum winter range elevation of about 7,546 ft (2,300 m), while Tioga Crest has this type of habitat at 9,515 ft (2,900 m). In the Lundy Canyon area there is good low-elevation south-facing winter range near 8,038 ft (2,450 m). Dunderberg Peak can provide large areas free of snow in the winter. It does not connect to low-elevation winter range but does connect to summer range in Lundy Canyon; visual winter range condition is mixed to open (Service 2007, pp. 127, 129).

The essential features found within Unit 1 may require special management considerations or protection to ameliorate the threats of overgrazing. Additionally, the PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation, and to protect against the impacts of recreation (e.g., Virginia Lakes, Lundy Lake, Lee Vining Canyon) and development activities (Sections of State Highway 120 are located in this unit). Furthermore, PCEs within Unit 1 may require special management considerations or protection in the form of avalanche control to protect against catastrophic events.

Unit 2: Mount Gibbs

Unit 2 consists of approximately 29,702 ac (12,020 ha) in Tuolumne and Mono Counties. Unit 2 is generally bounded on the north by SR 120 with U.S. Highway 395 located approximately 4 mi (6.4 km) to the east. State Route 158 lies along a portion of the southeastern boundary of this unit. The unit is bounded on the west, in part, by Lyell Canyon. It is immediately south of Unit 1 (Mount Warren) and is located southwest of Lee Vining. Land ownership within the unit includes approximately 29,702 ac (12,020 ha) of Federal land administered by the Inyo National Forest and Yosemite National Park.

Unit 2 begins at a low elevation of about 7,500 ft (2,286 m) on the eastern slope and rises to 9,000–12,000 ft (2,743–3,658 m) on the west. It encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). Unit 2 was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 7–8; 2000, pp. 6–7; 65 FR 20, January 3, 2000) and is currently occupied, with a minimum population estimate of 8 individuals (Wehausen and Stephenson 2006, p. 7). Unit 2 contains all of the features essential to the conservation of the Sierra Nevada bighorn sheep. It contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements; contains a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5); and contains mineral licks (PCE 3) (Chow 1992, p. 52). An area between Mount Dana and Mount Wood provides considerable high-elevation habitat that is blown free of snow in the winter and connects to south-facing slopes that decline to lower elevations. Winter habitat occurs at a minimum elevation of 9,105 ft (2,775 m) around Mount Gibbs; 8,859 ft (2,700 m) around Mount Lewis; and 7,546 ft (2,300 m) around Mount Wood. Visual winter range condition is open (Service 2007, p. 127). The south-facing side of Mount Lewis is steep and supports little snow in winter. The slopes above Silver Lake offer low-elevation east-facing winter range to 7,599 ft (2,316 m). This area may provide birthing habitat in spring during some years (Service 2007, p. 129).

The essential features found within Unit 2 may require special management considerations or protection to ameliorate the threats of overgrazing. Additionally, PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation, and to protect against the impacts of recreation (e.g., Lee Vining Canyon) and development activities (sections of SR 120 are located along the northern boundary of this unit; SR 158 lies along a portion of the southeastern boundary of this unit). Furthermore, PCEs within Unit 2 may require special management considerations or protection in the form

of avalanche control to protect against catastrophic events.

Unit 3: Convict Creek

Unit 3 consists of approximately 36,514 ac (14,777 ha) in Mono and Fresno Counties. Unit 3 is generally located within an area bounded on the northeast by U.S. Highway 395 (located about 2 mi (3.2 km) away), by Fish Creek and the boundary between Inyo and Sierra National Forests on the west, and by Mono Creek on the south. This unit is located about 3 mi (4.8 km) south of Mammoth Lakes. Land ownership within the unit includes approximately 36,497 ac (14,770 ha) of Federal land and 17 ac (7 ha) of private land. Federal land is administered by the Inyo and Sierra National Forests.

Unit 3 begins at a low elevation of about 7,500 ft (2,286 m) and rises to about 10,500–12,000 ft (3,200–3,658 m). The unit encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). Mineral licks (PCE 3) may or may not occur in this unit. This unit contains south-facing winter habitat above Convict Lake that descends down to 7,874 ft (2,400 m). This habitat is connected to high-elevation windswept patches on Laurel and Bloody Mountains. McGee Mountain has south-facing winter habitat down to about 8,005 ft (2,440 m) but only a small amount of high-elevation habitat. Nevahbe Ridge has windblown habitat, but it is east-facing and habitat occurs down to 8,530 ft (2,600 m) (Service 2007, pp. 127, 130). Visual winter range condition is open (Service 2007, p. 127).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Ober 1931, p. 32; Jones 1950, p. 40; Buechner 1960, p. 69; Barrett 1965, p. 43; Dunaway 1971, p. 19; Wehausen *et al.* 1987, p. 66; Wehausen 1988a, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 4 (Wheeler Ridge) and 2 (Mount Gibbs), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 4: Wheeler Ridge

Unit 4 consists of approximately 80,966 ac (32,766 ha) in Fresno, Inyo, and Mono Counties. Unit 4 is generally located within an area bounded by U.S. Highway 395 (located about 5–17 mi (8–27.4 km) to the east; Evolution Creek on the south; Pavilion Dome, Pilot Nob, and Mills Creek on the west; and Mono Creek on the north. This unit is located about 12 mi (19.3 km) west of Bishop. Land ownership within the unit includes approximately 80,568 ac (32,605 ha) of Federal land and 398 ac (161 ha) of private land. Federal land is administered by the Inyo and Sierra National Forests, Kings Canyon National Park, and the Bureau of Land Management.

Unit 4 begins at a low elevation of about 5,500 ft (1,676 m) on the eastern slope and rises to about 12,000 ft (3,658 m) on the west. It encompasses numerous areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 5–6, 8; 2000, pp. 3–5, 7; 65 FR 20, January 3, 2000) and is currently occupied with a minimum population estimate of 113 individuals (Wehausen and Stephenson 2006, p. 7). Unit 4 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. It contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements; contains a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5); and contains/provides mineral licks (PCE 3) (Stephenson 2007, p. 1). The area around Wheeler Ridge provides minimum elevation winter habitat at 5,578 ft (1,700 m) and is visually open (Service 2007, p. 127). Mount Tom is located south of Wheeler Ridge and provides an open winter visual condition and winter habitat at a minimum elevation of 6,398 ft (1,950 m) in Elderberry Canyon (Service 2007, p. 127, 129–130). High-elevation winter habitat is extensive on the west side of Mount Tom's north ridge. Narrow ridges on the south side can be snow free. Between Basin Mountain and Mount Humphreys, the plateau remains snow free and is accessible to sheep traveling ridge lines from Mount Tom by Four Gables and along the crest.

The essential features found within Unit 4 may require special management considerations or protection to ameliorate the threats of overgrazing. Additionally, PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. Finally, PCEs within Unit 4 may require special management considerations or protection for the threats due to mining, development, and recreation (e.g., Pine Creek area), and avalanche control may be needed to protect against catastrophic events.

Unit 5: Taboose Creek

Unit 5 consists of approximately 28,805 ac (11,657 ha) in Inyo and Fresno Counties. Unit 5 is generally located within an area bounded on the north by Big Pine Creek and on the south by Taboose Creek. U.S. Highway 395 is about 8.5 mi (13.7 km) to the east, and Marion and Observation Peaks are located to the west. This unit is located about 5 mi (8 km) southwest of Big Pine. Land ownership within the unit includes approximately 28,805 ac (11,657 ha) of Federal land administered by the Inyo National Forest and Kings Canyon National Park.

Unit 5 begins at a low elevation of about 6,000 ft (1,829 m) on the eastern slope and rises to 12,000 to over 14,000 ft (3,658–4,267 m) on the west. This unit was not occupied at the time of listing and is not currently occupied, but the unit is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). Mineral licks (PCE 3) may or may not occur in this unit. High windblown areas (9,187 ft (2,800 m)) occur on Birch and Kid Mountains that may support bighorn sheep. There appears to be limited low-elevation south- or east-facing habitat unless animals move south to Red Mountain or Taboose Creeks. Taboose Creek offers patches of high-elevation winter habitat and south-facing, low-elevation habitat where it occurs as low as 6,398 ft (1,950 m). The northeast side of Kid Mountain provides

some low habitat near 7,218 ft (2,200 m) (Service 2007, pp. 128, 132). The winter range visual condition is open in these areas (Service 2007, p. 128).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Ober 1914, p. 125; Jones 1950, p. 38; Buechner 1960, 69; Dunaway 1971 p. 19; Wehausen *et al.* 1987 p. 66; Wehausen 1988a, p. 101; Berger 1990, p. 94). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 6 (Sawmill Canyon) and 4 (Wheeler Ridge), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 6: Sawmill Canyon

Unit 6 consists of about 30,508 ac (12,346 ha) in Fresno and Inyo Counties. Unit 6 is generally located within an area bounded on the east by U.S. Highway 395 (located about 3 mi (4.8 km) away), on the south by Unit 7 (Mount Baxter) and Sawmill Pass and Creek, on the west by Woods Creek and the South Fork of Woods Creek, and on the north by Taboose Creek. Land ownership within the unit includes approximately 30,508 ac (12,346 ha) of Federal land administered by the Inyo National Forest and Kings Canyon National Park.

Unit 6 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to about 10,500 to over 14,000 ft (3,200–4,267 m). Unit 6 was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 4–5, 8; 2000, pp. 3, 7; 65 FR 20, January 3, 2000) and is currently occupied with a minimum population estimate of 36 individuals (Wehausen and Stephenson 2006, p. 7). Unit 6 has features that are essential to the conservation of the Sierra Nevada bighorn sheep. It contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is not known if mineral licks (PCE 3) occur on this unit. Unit 6 provides foraging habitat at the northern boundary near Mount Pinchot (Service 2007, p. 132). In addition, minimum elevations of winter habitat occur in the Goodale Creek area at 6,890 ft (2,100 m) and in the Sawmill Creek area at 4,922 ft (1,500 m); winter visual condition is open (Service 2007, p. 128).

The essential features found within Unit 6 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. The PCEs in Unit 6 may also require special management considerations or protection for threats due to recreation, and avalanche control may be needed to protect against catastrophic events.

Unit 7: Mount Baxter

Unit 7 consists of approximately 32,220 ac (13,039 ha) in Fresno and Inyo Counties. Unit 7 is generally located within an area bounded on the east by U.S. Highway 395 (located about 3 mi (4.8 km) away); on the south by Bubbs Creek and Forest Route 13S17 to Independence; on the west by Mount Bago, Gardiner Lakes, and Mount Clarence King; and on the north by Unit 6 (Sawmill Canyon) and Sawmill Pass and Creek. This unit is located about 6 mi (9.7 km) west of Independence. Land ownership within the unit includes approximately 32,198 ac (13,030 ha) of Federal land and 22 ac (9 ha) of private land. Federal land is administered by the Inyo National Forest and Kings Canyon National Park.

Unit 7 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to about 10,500 to 12,000 ft (3,200–3,658 m) on the west. It encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). Unit 7 was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 3–4, 8; 2000, pp. 2–3, 7; 65 FR 20, January 3, 2000) and is currently occupied with a minimum population estimate of 69 individuals (Wehausen and Stephenson 2006, p. 7). Unit 7 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. It contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements; contains a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5); and contains mineral licks (PCE 3) (Jones 1950, p. 63; Hicks and Elder 1979, p. 911). This unit provides foraging habitat along the ridges and in drainages of Mount Baxter. Minimum elevations of winter habitat in the Thibaut-Sand Mountain area occur at 5,003 ft (1,525 m), and in the Onion Valley area at 7,546 ft (2,300 m); winter visual condition is open (Service 2007, p. 128).

In addition to containing the features essential to the conservation of the Sierra Nevada bighorn sheep, Unit 7 has additional conservation value as it served as a source population, due to its size and productivity, for reintroductions to the Wheeler Crest area (1979, 1980, 1982, 1986, 1988), Mount Langley (1980 and 1982), and Lee Vining Canyon area (1986, 1988) (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 6). Individuals from this population may be used for future translocations within the range.

The essential features found within Unit 7 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. PCEs within Unit 7 also may require special management considerations or protection for threats due to recreation (e.g., Baxter Pass and Onion Valley), and avalanche control may be needed to protect against catastrophic events.

Unit 8: Mount Williamson

Unit 8 consists of about 32,560 ac (13,177 ha) in Inyo and Tulare Counties. Unit 8 is generally located within an area bounded on the east by U.S. 395 (located about 9 mi (14.5 km) away); on the south by Tulainyo Lake; on the west by the Kern River (located about 3.5 miles (5.6 km) away); and on the north by Forest Route 13S17 to Independence (located about 1.5 mi (2.4 km) away). This unit is located southwest of Independence and northwest of Lone Pine. Land ownership within the unit includes approximately 32,560 ac (13,177 ha) of Federal land administered by the Inyo National Forest and Sequoia and Kings Canyon National Parks.

Unit 8 begins at a low elevation of about 6,000 ft (1,829 m) on the eastern slope and rises to 12,000 to over 14,000 ft (3,658–4,267 m) on the west. Unit 8 was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 2–3, 8; 2000, pp. 1–2, 7; 65 FR 20, January 3, 2000) and is currently occupied with a minimum population estimate of 20 individuals (Wehausen and Stephenson 2006, p. 7). Unit 8

contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is not known if mineral licks (PCE 3) occur in this unit. The Shepherd Creek-Pinyon Creek area in this unit offers winter habitat at a minimum elevation of 6,808 ft (2,075 m); the George Creek-North Bairs Creek provides this habitat at 6,234 ft (1,900 m) (Service 2007, p. 128). The winter visual condition is mixed (Service 2007, p. 128).

The essential features found within Unit 8 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. This unit could provide an estimated additional 2.2 sq mi (5.8 sq km) of winter range with a relative probability of equal to or greater than 10 percent use if forests were reduced by burning (Johnson *et al.* 2005, p. 34). PCEs within Unit 8 may require special management considerations or protection to ameliorate the possible threat of overgrazing due to the proximity of this unit to Federal grazing allotments. Furthermore, PCEs within Unit 8 also may require special management considerations or protection for threats due to recreation (e.g., Whitney Portal and Trailhead), and avalanche control may be needed to protect against catastrophic events.

Unit 9: Big Arroyo

Unit 9 consists of approximately 24,987 ac (10,112 ha) in Tulare County. Unit 9 is generally located within an area bounded on the east by the Kern River; on the north by Kern-Kaweah River, Junction Meadow, and Wallace Creek area; and on the west and south by the Big Arroyo Creek. Land ownership within the unit includes approximately 24,987 ac (10,112 ha) of Federal land is administered by Sequoia National Park.

Unit 9 begins at a low elevation of about 6,500 ft (1,981 m) on the eastern slope and rises to about 12,000 ft (3,658 m) on the west. The northern boundary encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is not known if mineral licks (PCE 3) are located within this unit. This unit contains no high-elevation wind-swept areas (Service 2007, p. 134). Winter habitat is provided at a minimum elevation of 6,890 ft (2,100 m) with a mixed visual condition due to scattered trees (Service 2007, pp. 128, 134). From the upper end of the Big Arroyo drainage, sheep could find access to alpine habitat on Kaweah Peaks.

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Jones 1950, p 35; Buecher 1960, p. 69; Barrett 1965, p. 43; Riegelhuth 1965, p. 35; Wehausen 1988b, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 8 (Mount Williamson), and 10 (Mount Langley), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 10: Mount Langley

Unit 10 consists of approximately 32,845 ac (13,292 ha) in Inyo and Tulare Counties. Unit 10 is generally located within an area bounded on the east by Forest Route 16S02 located from immediately adjacent to the unit to 7 mi (11.3 km) away, on the south by Muah Mountain, on the west by Cirque Peak and the Perrin Creek area, and on the north by Lone Pine Creek. This unit is located about 7 mi (11.3 km) southwest of Lone Pine. Land ownership within the unit includes approximately 32,845 ac (13,292 ha) of Federal land administered by the Inyo National Forest, Sequoia National Park, and Bureau of Land Management.

Unit 10 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to 9,000 to 12,000 ft (2,743–3,658 m) on the west side. It encompasses areas between 12,000 and 14,000 ft (3,658–4,267 m). Unit 10 was occupied at the time of listing (Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 1–2, 8; 2000, pp. 1, 7; 65 FR 20, January 3, 2000) and is currently occupied with a minimum population estimate of 90 individuals (Wehausen and Stephenson 2006, p. 7). Unit 10 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is not known if mineral licks (PCE 3) occur in this unit. The unit provides low elevation (5,742 ft, 1,750 m) mixed winter range in the Carroll Creek-Turtle Creek area. It also provides low-elevation (4,757 ft, 1,450 m), open winter range in the Slide Canyon-Cottonwood Creek area (Service 2007, pp. 128, 133). From this area, it is possible that bighorn sheep could cross a short distance of the open south-facing forest by Wonoga Peak to access the large open plateau country. It is also possible that bighorn sheep using the Cottonwood Creek area use summer range to the southeast of the Kern Plateau where elevations are about 10,000 ft (3,048 m) (Service 2007, p. 130).

The essential features found within Unit 10 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. This unit could provide an estimated additional 1.8 sq mi (4.7 sq km) of winter range with a relative probability of equal to or greater than 10 percent use if forests were reduced by burning (Johnson *et al.* 2005, p. 34). PCEs within Unit 10 may require special management considerations or protection to ameliorate the possible threat of overgrazing due to the proximity of this unit to Federal grazing allotments. PCEs within Unit 10 may also require special management considerations or protection for threats due to recreation (e.g., Whitney Portal and Trailhead) and development (Forest Route 16S02 crosses a portion of this unit). Furthermore, PCEs within Unit 10 may require special management considerations or protection in the form of avalanche control to protect against catastrophic events.

Unit 11: Laurel Creek

Unit 11 consists of approximately 22,037 ac (8,918 ha) in Tulare County. Unit 11 is generally located within an

area bounded on the east by the Kern River; on the south by Pistol, Laurel, and Golden Trout Creeks; on the west by a portion of Little Kern River; and on the north by Soda Creek. Land ownership within the unit includes approximately 22,037 ac (8,918 ha) of Federal land administered by the Sequoia National Forest and Sequoia National Park.

Unit 11 begins at a low elevation of about 6,500 ft (1,981 m) on the eastern slope and rises to 10,500 to 12,000 ft (3,200–3,658 m) on the west. It includes a few small areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but the unit is essential to the conservation of Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is unknown whether mineral licks (PCE 3) occur in this unit. This unit contains no high-elevation wind-swept areas (Service 2007, p. 134). Winter habitat is provided at a minimum elevation of 6,808 ft (2,075 m) with a mixed visual condition due to scattered trees (Service 2007, pp. 128, 134). Laurel Creek provides access to summer range.

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Buechner 1960 p. 69; Barrett 1965, p. 43; Wehausen 1988b, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Unit 10 (Mount Langley), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 12: Olancha Peak

Unit 12 consists of approximately 30,421 ac (12,311 ha) in Tulare and Inyo Counties. Unit 12 is generally located within an area bounded on the east by U.S. Highway 395, on the south by Falls and Walker Creeks, on the west by a portion of the Pacific Crest National Scenic Trail, and on the north by Muah Mountain. This unit is located west of the towns of Cartago and Olancha. Land ownership within the unit includes approximately 30,421 ac (12,311 ha) of Federal land administered by the Inyo National Forest and Bureau of Land Management.

Unit 12 begins at a low elevation of about 4,000 ft (1,219 m) on the eastern slope and rises to about 9,000 to 10,500 ft (2,743–3,200 m) on the west. It is the southernmost unit designated as critical habitat for the Sierra Nevada bighorn sheep. This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and also allows for seasonal elevational movements, and a range of vegetation types (PCE 1 and PCE 2) (Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38; Service 2007, pp. 3–5). It is not known if mineral licks (PCE 3) occur within this unit. This unit provides bighorn sheep habitat in the areas of Ash, Braley, Cartago, Olancha, and Falls Creeks. Cartago, Olancha and Falls Creeks connect by Olancha Canyon to Olancha Peak (12,123 ft, 3,695 m) which provides some alpine summer habitat (southernmost in the Sierra Nevada) (Service 2007, p. 133). Winter range occurs as open, low-elevation (4,757 ft, 1,450 m), south-facing slopes (Service 2007, pp. 128, 133).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Jones 1950, p. 39; Wehausen *et al.* 1987, p. 66; Wehausen 1988a, p. 101). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Unit 10 (Mount Langley), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F. 3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to

extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Sierra Nevada bighorn sheep or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) or a permit from us under section 10(a)(1)(B) of the Act) are examples of agency actions that may be subject to the consultation process under section 7(a)(2) of the Act. 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 carried out, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Activities that may result in the destruction or adverse modification of critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for Sierra Nevada bighorn sheep. Generally, the conservation role of Sierra Nevada bighorn sheep 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, activities involving a Federal action that may result in the destruction or adverse modification of such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for Sierra Nevada bighorn sheep include, but are not limited to:

(1) Actions that would significantly reduce ongoing management and conservation efforts that benefit the Sierra Nevada bighorn sheep on public lands. Such activities could include, but are not limited to, the sale, exchange, or lease of lands managed by the USFS or other Federal agency. These activities could reduce the amount of space that is available for individual and population growth and normal behavior, as well as reduce or eliminate the number and extent of sites for foraging, breeding, reproduction, and rearing of offspring. These activities could also reduce the opportunities available to Federal agencies to exercise their section 7(a)(1) authorities to carry out programs to conserve listed species.

(2) Actions that would significantly reduce the availability of or accessibility to summer and winter ranges. Such activities could include, but are not limited to, grazing, mining, and road construction activities. These activities could degrade, reduce, fragment or eliminate available foraging resources or alter current foraging activities of Sierra Nevada bighorn sheep.

(3) Actions that would result in the significant expansion of tall, dense vegetation, such as timber, within bighorn sheep habitat. Such activities could include, but are not limited to, fire suppression. These activities could allow expansion of vegetation cover such that movement patterns of bighorn sheep are altered by avoidance of these areas. Tall, dense vegetation provides cover for predators such as the mountain lion, a common predator of Sierra Nevada bighorn sheep.

(4) Actions that would create significant barriers to movement. Such activities could include, but are not limited to, road construction and resort or campground facility development or expansion. These activities could interfere with movement within and between habitats reducing the availability of habitat for foraging, breeding, reproduction, sheltering, and rearing of offspring. These activities could also reduce opportunities for movement between existing populations. Dispersal and interaction between populations could be affected, restricting gene flow and jeopardizing the integrity of the gene pool. Road construction can result in the direct mortality of individuals through collisions with vehicles.

(5) Actions that would significantly degrade habitat or cause a disturbance to Sierra Nevada bighorn sheep. Such activities could include, but are not limited to, recreational activities, such as hiking, camping, rock and ice climbing, outfitter guides and pack animal expeditions, snowmobiling, and off-road vehicle use. These activities could impact the quality and quantity of forage across the landscape, or displace animals from key foraging areas. These activities could also impact the accessibility to key habitats such as escape terrain, breeding sites, or lambing areas. If animals flee these areas as a result of these activities, energy is expended which can negatively impact the animal's body condition, resulting in possible reduced reproductive success.

We consider all of the units designated as critical habitat to contain features essential to the conservation of the Sierra Nevada bighorn sheep, including those units which were not occupied at the time of listing. All units are within the historical geographic range of the subspecies, and those units which were not occupied at the time of listing have been determined to be essential for the conservation of the Sierra Nevada bighorn sheep. Detailed descriptions of the units and their occupancy status can be found in each of the unit descriptions or within Table 3. Under section 7 of the Act, Federal agencies already consult with us on activities in areas currently occupied by the Sierra Nevada bighorn sheep, or if the subspecies may be affected by the action, the consultation is to ensure that their actions do not jeopardize the continued existence of the Sierra Nevada bighorn sheep.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, 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 statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) 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 we consider an area for exclusion, then 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, we conducted an economic analysis of the impacts of the proposed critical habitat designation and related factors, which was available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 242.19.

Currently, we are aware of four documents related to the conservation and recovery of the Sierra Nevada bighorn sheep. We reviewed these documents, but we are not excluding lands covered by them for reasons indicated below. These documents include the Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1984), the Bighorn Sheep Management Plan (National Park Service 1986), the Inyo National Forest Resource & Management Plan (U.S. Forest Service 1988), and A Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997). All of these documents were prepared prior to the emergency listing of the Sierra Nevada bighorn sheep in 1999.

The goal of the Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Bighorn Sheep Interagency Advisory Group 1984, pp. 1–2) was to improve the status of the Sierra Nevada bighorn sheep by: (1) Maintaining the health and viability of existing populations and promoting the establishment of at least three populations that exceeded 100 animals and were geographically distant from one another; (2) restoring bighorn sheep to former ranges within the Sierra Nevada where ecologically, economically, and politically feasible and where favorable to their success; and (3) ensuring genetic integrity by using only bighorn sheep from existing Sierra Nevada populations to restock historical ranges. Conservation recommendations made in A Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 11–14) include restoration of the Sierra Nevada bighorn sheep in a distribution that assures long-term viability and reestablishment throughout its native range and preservation of current populations, predator control, fire (let burn policy), addressing grazing by domestic sheep and goats, ensuring genetic diversity, reintroductions and augmentations, and research and monitoring. The goal of the Bighorn Sheep Management Plan (National Park Service 1986, pp. 1–2) was to restore and perpetuate bighorn sheep and to protect the integrity of the ecosystem. Management was directed toward restoring and maintaining populations of bighorn sheep for ecological, scientific, educational, aesthetic, and recreational values. The Inyo National Forest's Land & Resource Management Plan (U.S. Forest Service 1988, pp. 101–102) provided guidance to maintain existing sheep habitat, expand the range of bighorn sheep by transplanting animals into suitable unoccupied habitats within the historical range, maintain the health of existing herds by not allowing an increase in livestock use if disease transmission was shown to be harmful to bighorn sheep, and prohibit the conversion of livestock type from cattle to sheep on or adjacent to existing or approved reintroduction sites for the bighorn sheep.

The Inyo National Forest also established two California Bighorn Sheep Zoological Areas for the Mount Baxter and Mount Williamson herds. These areas totaled 4,505 ac (1,823 ha) in addition to existing wilderness lands (36,235 ac, 14,664 ha)) occupied by bighorn sheep. In 1981, forest officials issued Order No. 04–81–3, which prohibited entrance into these areas without a valid visitor use permit, restricted entrance into closed portions of the zoological areas during certain time periods, restricted the presence of dogs, and restricted the discharge of firearms unless taking a game animal legally permitted by the State of California (U.S. Forest Service 1981, p. 1). Exemptions were allowed for certain individuals, duties, and activities. This order was issued during a time when recreational use was believed to be detrimentally impacting the Mount Baxter and Mount Williamson herds.

While these plans were prepared to assist in the restoration and recovery and habitat protection of the Sierra Nevada bighorn sheep, they were written prior to the final listing of this subspecies in 2000, and they generally offer only guidance and recommendations related to translocations, research, monitoring, education, and habitat management with little specificity of actions to be implemented. The guidance provided in these documents and the recreational prohibitions in the California Bighorn Sheep Zoological Areas did not provide a basis for excluding lands covered by them.

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. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it 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 February 5, 2008 (73 FR 6684). We accepted comments on the draft analysis until March 6, 2008. Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any relevant new information.

The primary purpose of the EA is to estimate the potential economic impacts associated with the designation of critical habitat for the Sierra Nevada bighorn sheep. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This EA considers the

economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group of the economic sector.

The intent of the economic analysis is to quantify the economic impacts of all potential conservation efforts for the Sierra Nevada bighorn sheep; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic analysis provides estimated costs of the foreseeable potential economic impacts of the critical habitat designation (incremental impacts) and other conservation-related actions (baseline impacts) for this species over the next 20 years. It also considers past costs associated with conservation of the species from the time it was listed in 2000 (65 FR 20, January 3, 2000), until the year the proposed critical habitat rule was published (72 FR 40956, July 25, 2007).

The economic analysis considers the potential economic effects of actions relating to the conservation of the Sierra Nevada bighorn sheep, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Sierra Nevada bighorn sheep in areas containing features essential to the conservation of the species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private business, and individuals. The analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date Sierra Nevada bighorn sheep was listed as endangered (65 FR 20, January 3, 2000) and considers those costs that may occur in the 20 years following the designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

Activities associated with the conservation of the Sierra Nevada bighorn sheep are likely to primarily impact future domestic sheep grazing, recreation management, and habitat management. The EA forecasts baseline economic impacts in the areas designated. The present value of these impacts, applying a 3 percent discount rate, is $21.0 million ($1.41 million annualized), or $15.5 million ($1.46 million annualized) using a 7 percent discount rate. The EA forecasts the present value of the incremental economic impacts to be $120,000 ($8,080 annualized), applying a 3 percent discount rate, or $94,900 ($8,960 annualized) using a 7 percent discount rate.

We evaluated the potential economic impact of this designation as identified in the economic analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time. The final economic analysis is available at *http://www.regulations.gov* and *http://www.fws.gov/nevada* or upon request from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

After consideration of the impacts under section 4(b)(2) of the Act, we have not excluded any areas from the final critical habitat designations based on the identified economic impacts, any impact on national security, and any other relevant impacts.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever an agency must 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. SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Sierra Nevada bighorn sheep will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered 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 authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect Sierra Nevada bighorn sheep (see Section 7 Consultation section). Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see Application of the ''Adverse Modification'' Standard section).

In our economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Sierra Nevada bighorn sheep and the designation of critical habitat. The analysis estimated prospective economic impacts associated with the proposed rulemaking as described in Chapters 2 through 4 and Appendix A of the economic analysis and evaluates the potential for economic impacts related to three categories: Grazing, recreation management, and habitat management.

The economic analysis identified one domestic sheep grazing permittee operating in the Humboldt-Toiyabe National Forest, and two resorts and unidentified outdoor pack companies operating in the Humboldt-Toiyabe and Inyo National Forests that qualify as small businesses that could be impacted due to their activities within areas designated as critical habitat.

For the one grazing permittee, the economic analysis estimates a cost of $13,000 associated with conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate ($875 annualized). For the two resorts and unidentified outdoor pack companies, the analysis estimates a cost of $2,730 associated with conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate ($183 annualized). Incremental impacts are expected only to occur in designated critical habitat Units 1 and 2. This number of small business entities is not considered a substantial number.

The USFS is expected to incur incremental costs as a result of this designation, but it is not considered a small entity by the SBA.

In summary, we have considered whether the final rule would result in a significant economic impact on a substantial number of small entities. Based on the above reasoning and currently available information, we certify that this rule will not have a significant economic impact on a substantial number of small business entities. Therefore, 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 (see **ADDRESSES** for information on obtaining a copy of the final economic analysis).

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Sierra Nevada bighorn sheep conservation activities within the final critical habitat designation are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal

governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not result in the destruction or adverse modification of critical habitat. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto 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. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Sierra Nevada bighorn sheep in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Sierra Nevada bighorn sheep does not pose significant takings implications.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this designated critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Sierra Nevada bighorn sheep imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the Sierra Nevada bighorn sheep.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of the Sierra Nevada bighorn sheep. Therefore, critical habitat for the Sierra Nevada bighorn sheep has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the

Internet at *http://www.regulations.gov* and *http://www.fws.gov/nevada/*.

Author(s)

The primary authors of this rulemaking are staff members of the Nevada Fish and Wildlife Office, Reno, Nevada, and the Ventura Fish and Wildlife Office, Ventura, California.

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 ''Sheep, Sierra Nevada bighorn'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(*h*) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Sheep, Sierra Nevada bighorn.	*Ovis canadensis sierrae*.	U.S.A. (CA)—Sierra Nevada.	U.S.A. (CA)—Sierra Nevada.	E	660E, 675	17.95(a) ...	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(a), add an entry for ''Sierra Nevada bighorn sheep (*Ovis canadensis sierrae*)'' in the same alphabetical order in which the subspecies appears in the table in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Sierra Nevada Bighorn Sheep (*Ovis canadensis sierrae*)

(1) Critical habitat units are depicted for Mono, Fresno, Inyo, Tulare, and Tuolumne Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Sierra Nevada bighorn sheep are the habitat components that provide:

(i) Non-forested habitats or forest openings within the Sierra Nevada from 4,000 ft (1,219 m) to 14,500 ft (4,420 m) in elevation with steep (greater than or equal to 60 percent slope), rocky slopes that provide for foraging, mating, lambing, predator avoidance, and bedding and that allow for seasonal elevational movements between these areas.

(ii) Presence of a variety of forage plants as indicated by the presence of grasses (e.g., *Achnanthera* spp.; *Elymus* spp.) and browse (e.g., *Ribes* spp.; *Artemisia* spp., *Purshia* spp.) in winter, and grasses, browse, sedges (e.g., *Carex* spp.) and forbs (e.g., *Eriogonum* spp.) in summer.

(iii) Presence of granite outcroppings containing minerals such as sodium, calcium, iron, and phosphorus that could be used as mineral licks in order to meet nutritional needs.

(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.

(4) *Critical Habitat Map Units*—Boundaries of designated critical habitat were derived from Sierra Nevada Bighorn Sheep Herd Units developed by the California Department of Fish and Game for the final Sierra Nevada Bighorn Sheep recovery plan. The designated critical habitat unit boundaries differ from Sierra Nevada bighorn sheep Herd Unit polygons by the removal of developed areas and private parcels that are unlikely to contain the primary constituent elements. The data were projected to Universal Transverse Mercator (UTM), zone 11, on the North American Datum of 1983.

(5) Note: Index map of Sierra Nevada bighorn sheep critical habitat follows:

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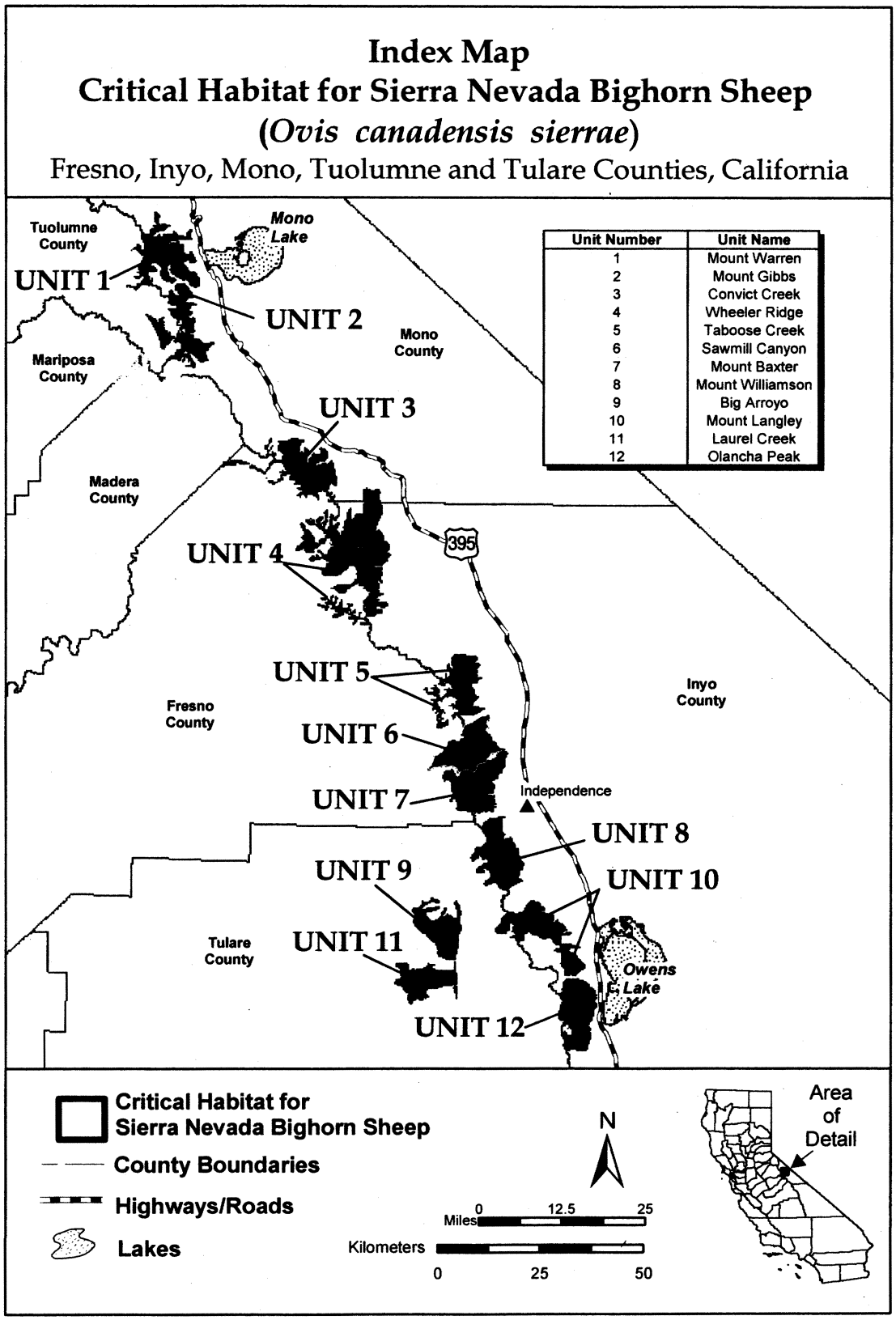

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(6) Unit 1 (Mount Warren); Mono and Tuolumne Counties, California.

(i) From USGS 1:24,000 scale quadrangles Dunderberg Peak, Lundy, Tioga Pass, and Mount Dana. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 300786, 4215918; 301348, 4215650; 301467, 4215784; 302384, 4216077; 303459, 4215689; 303626, 4215452; 303452, 4215254; 303072, 4215278; 302764, 4215064; 302495, 4214977; 302218, 4214677; 302052, 4214558; 301783, 4214281; 300486, 4214005; 300351, 4213839; 299853, 4213704; 299442, 4213475; 299007, 4213079; 298991, 4212842; 299252, 4212723; 299640, 4212755; 300185, 4212913; 300359, 4213103; 300525, 4213166; 300565, 4213498; 300952, 4213562; 301111, 4213158; 301435, 4212858; 301593, 4213150; 301807, 4213253; 302566, 4213245; 303396, 4213317; 303902, 4213419; 304227, 4214044; 304567, 4214092; 304891, 4213752; 305310, 4213467; 305864, 4213158; 306239, 4212945; 306714, 4212984; 307362, 4212747; 307474, 4212940; 307514, 4213252; 307539, 4213822; 307697, 4214242; 307964, 4214386; 308395, 4214515; 308841, 4214450; 308846, 4214218; 308653, 4213802; 308499, 4213297; 308529, 4212618; 308692, 4211980; 308673, 4211876; 308514, 4211856; 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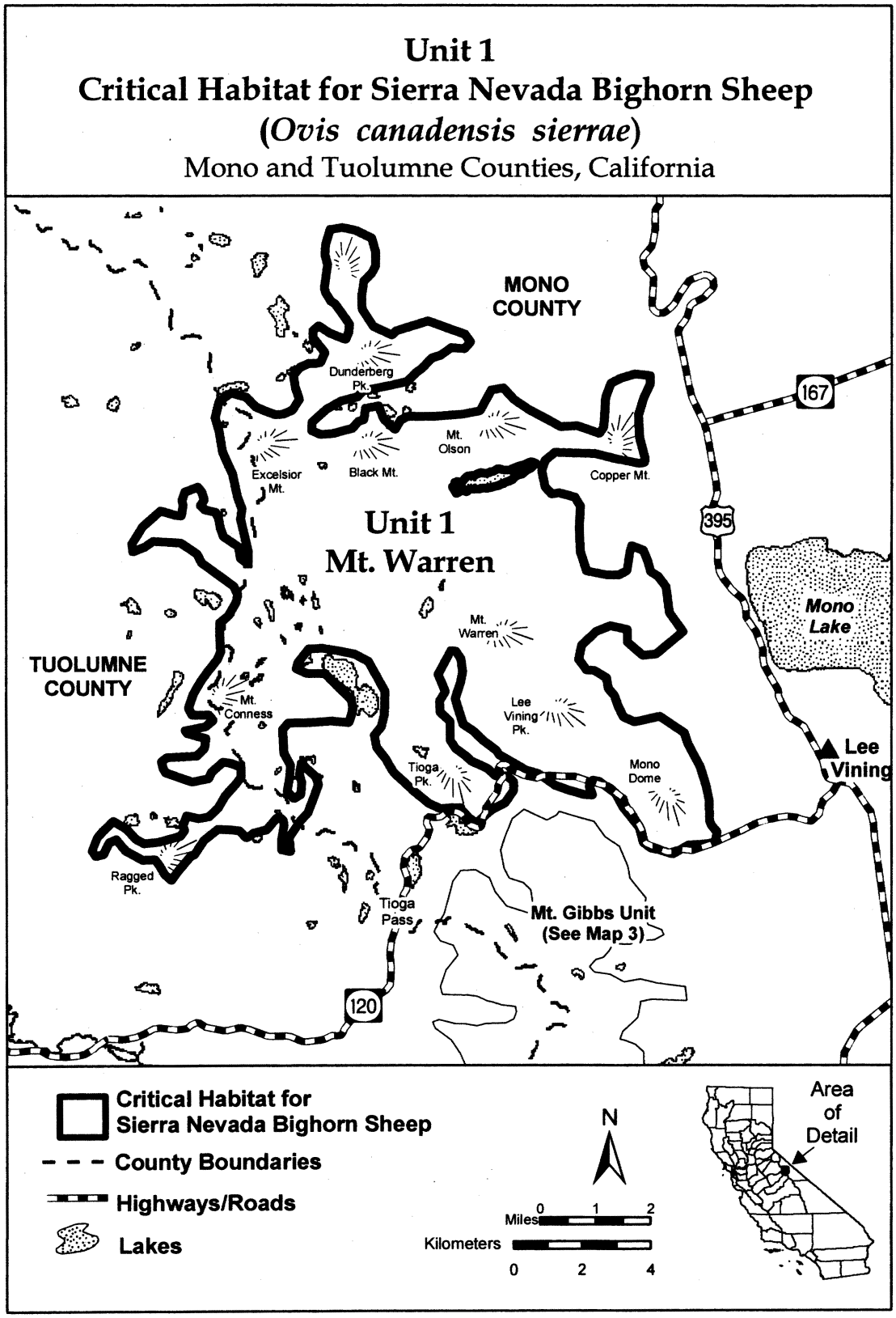
(ii) Note: Map of Unit 1 Mount Warren for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



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(7) Unit 2 (Mount Gibbs); Mono and Tuolumne Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Dana, Vogelsang Peak, Kiop Peak, and June Lake. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 305185, 4201586; 305855, 4201263; 306124, 4201406; 306203, 4201516; 306615, 4201390; 307214, 4201220; 307539, 4200758; 307946, 4200481; 308191, 4199870; 308255, 4199529; 308437, 4199297; 308728, 4198949; 308679, 4198612; 308778, 4198157; 309188, 4197993; 309259, 4197840; 308990, 4197698; 308498, 4197676; 308268, 4197570; 308079, 4197576; 307891, 4197582; 307737, 4197512; 307657, 4197364; 307500, 4197181; 307271, 4197113; 307075, 4196893; 307221, 4196737; 307673, 4196685; 308081, 4196446; 308575, 4196543; 308912, 4196457; 309062, 4196415; 309890, 4196313; 309934, 4195897; 309443, 4195913; 309141, 4195923; 308877, 4195931; 308572, 4195866; 308570, 4195790; 308525, 4195566; 308481, 4195379; 308053, 4194978; 307970, 4194755; 308120, 4194712; 308418, 4194590; 308675, 4194356; 308668, 4194130; 308697, 4193865; 308613, 4193604; 308382, 4193461; 308112, 4193281; 307734, 4193293; 307728, 4193105; 307761, 4192953; 308063, 4192944; 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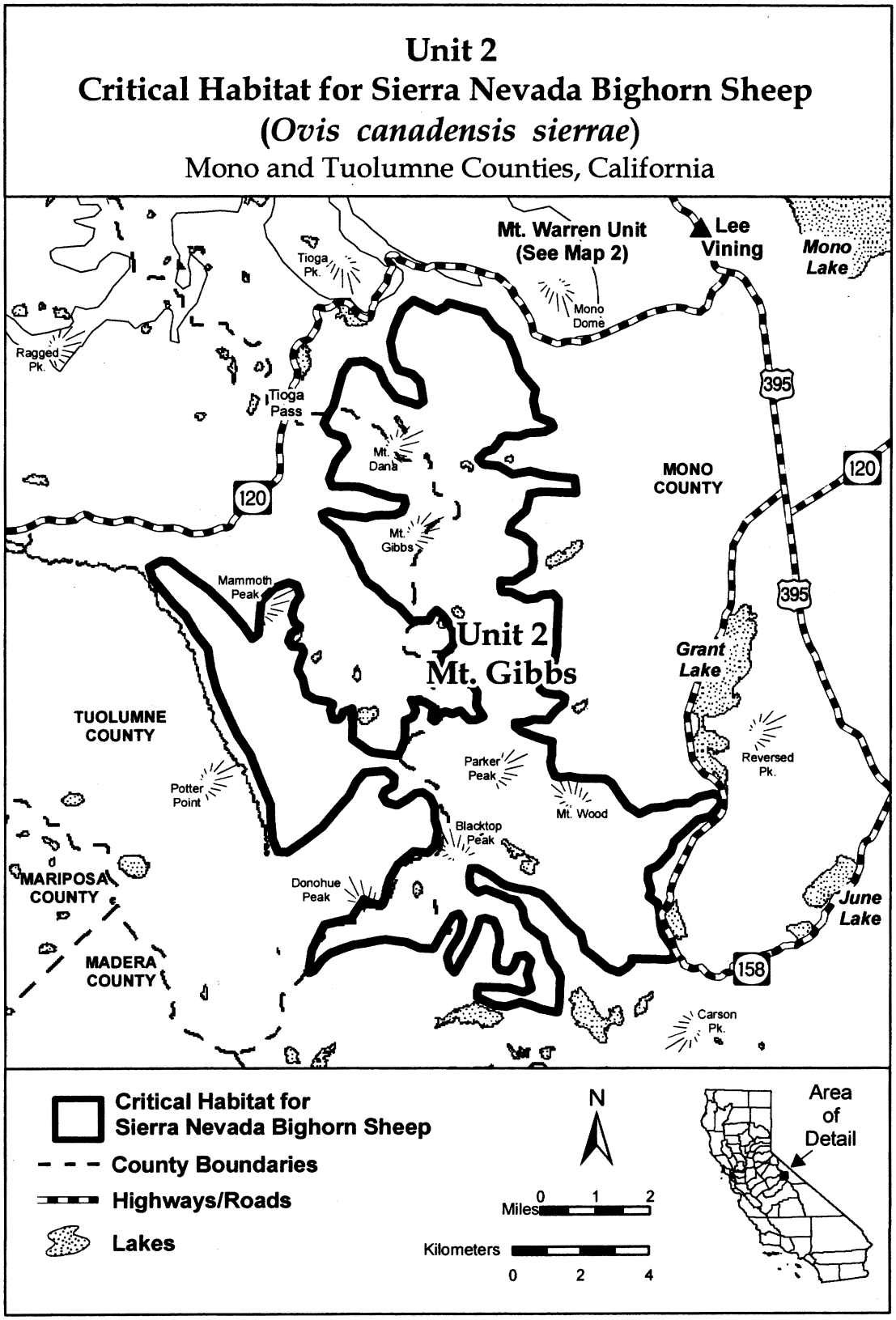
(ii) Note: Map of Unit 2 (Mount Gibbs) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(8) Unit 3 (Convict Creek); Fresno and Mono Counties, California.

(i) From USGS 1:24,000 scale quadrangles Crystal Crag, Bloody Mountain, Convict Lake, Graveyard Peak, and Mount Abbot. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 327481, 4161516; 327397, 4161255; 327279, 4161108; 327082, 4160851; 327076, 4160663; 327184, 4160508; 327409, 4160464; 327720, 4160717; 327917, 4160975; 328080, 4161346; 328312, 4161527; 328424, 4161486; 328373, 4161073; 328322, 4160660; 328009, 4160294; 327814, 4160112; 327619, 4159930; 327573, 4159668; 327755, 4159436; 327980, 4159391; 328058, 4159464; 328100, 4159613; 328112, 4159989; 328455, 4160091; 328333, 4159794; 328366, 4159642; 328515, 4159600; 329004, 4159509; 329304, 4159462; 329223, 4159276; 329061, 4158942; 329089, 4158640; 329077, 4158264; 329260, 4158070; 329631, 4157870; 329891, 4157711; 330272, 4157812; 330655, 4157988; 330812, 4158171; 330677, 4158665; 330869, 4158772; 330951, 4158957; 330667, 4159531; 330492, 4159989; 330469, 4160441; 330231, 4160072; 329887, 4159970; 329706, 4160202; 329604, 4160582; 329624, 4161184; 329708, 4161445; 329829, 4161705; 329701, 4162424; 329860, 4162683; 330161, 4162636; 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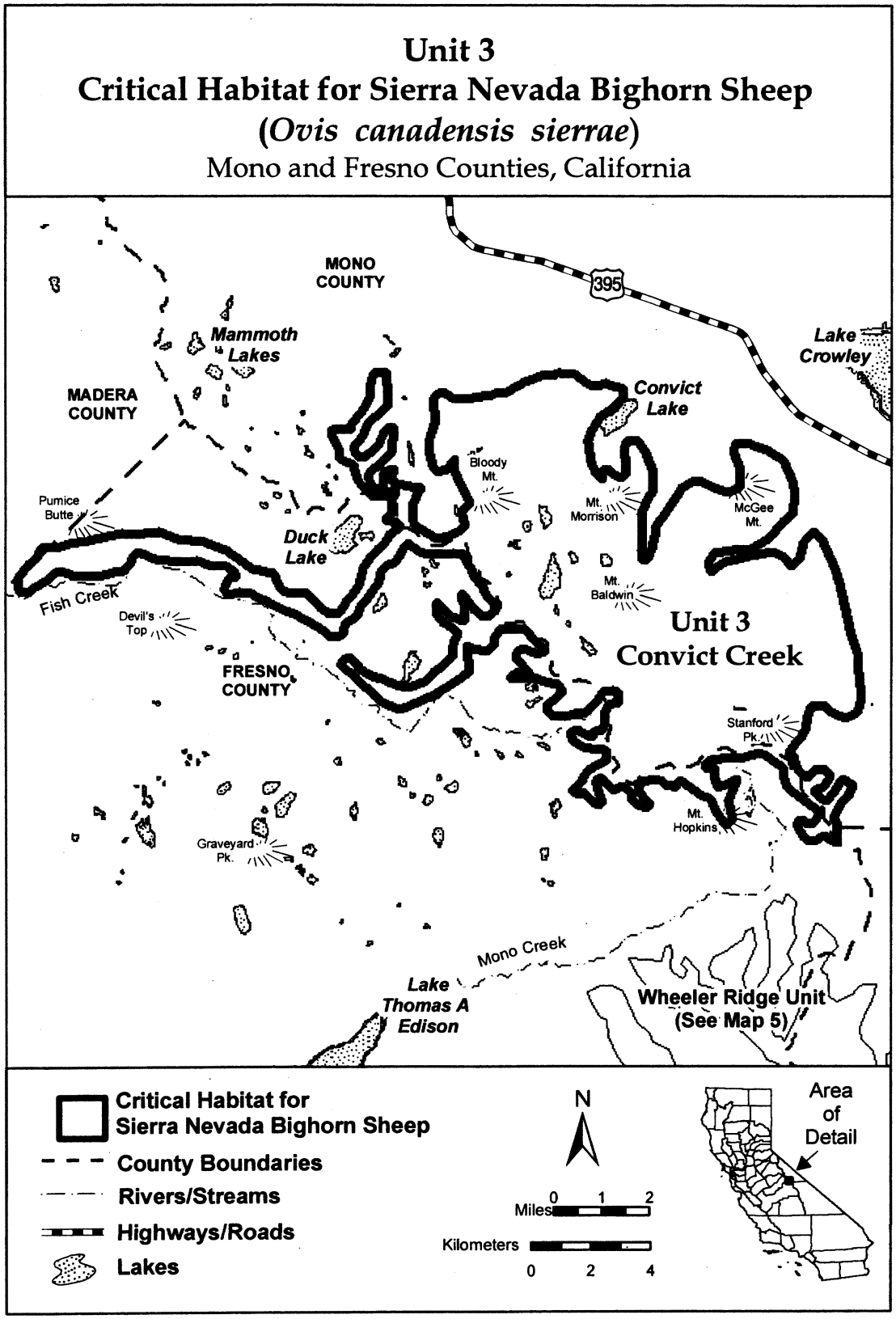
(ii) Note: Map of Unit 3 (Convict Creek) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(9) Unit 4 (Wheeler Ridge); Fresno, Inyo and Mono Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Abbot, Mount Morgan, Mount Hilgard, Mount Tom, Tungsten Hills, Mount Henry, Mount Darwin and Mount Thompson. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 351676, 4150867; 352490, 4150441; 352738, 4150510; 353065, 4150282; 353442, 4150500; 353779, 4150847; 354294, 4150817; 354552, 4150341; 354641, 4149994; 354681, 4149558; 354453, 4149439; 354245, 4149221; 354463, 4148953; 354522, 4148735; 354413, 4148398; 354532, 4148140; 354493, 4147862; 354909, 4147912; 354711, 4147119; 355098, 4146296; 355132, 4146201; 355158, 4146034; 355162, 4145681; 355123, 4145288; 355123, 4144981; 355035, 4144787; 354974, 4144489; 354895, 4144120; 354745, 4143840; 354537, 4143588; 354359, 4143519; 354349, 4143132; 354329, 4142934; 354141, 4142686; 353967, 4141942; 353729, 4141853; 353600, 4141804; 353610, 4141566; 353729, 4141328; 353610, 4141219; 353600, 4141000; 354066, 4140584; 354463, 4140584; 354780, 4140286; 355068, 4140019; 355256, 4139642; 355425, 4139136; 355395, 4138799; 355489, 4138412; 355499, 4138254; 355618, 4138144; 355737, 4137748; 356035, 4137639; 356560, 4137272; 356818, 4136984; 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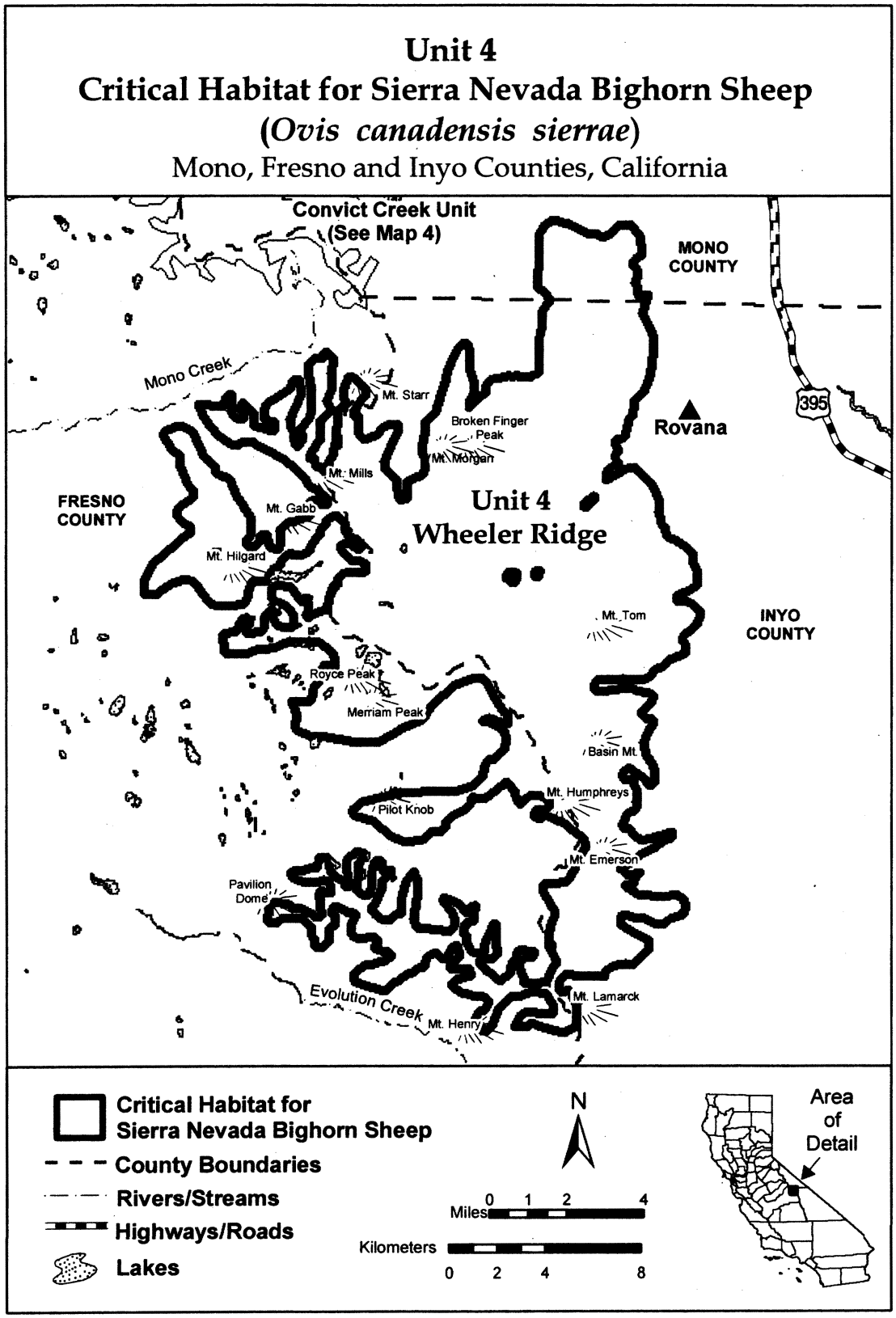
(ii) Note: Map of Unit 4 (Wheeler Ridge) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(10) Unit 5 (Taboose Creek); Fresno and Inyo Counties, California.

(i) From USGS 1:24,000 scale quadrangles Coyote Flat, North Palisade, Split Mountain, Fish Springs, Mount Pinchot, and Aberdeen. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 376756, 4109414; 376837, 4109413; 376838, 4109467; 376865, 4109466; 377166, 4109426; 377588, 4109383; 377647, 4109351; 377738, 4109348; 377949, 4109341; 378189, 4109273; 378307, 4109179; 378423, 4109025; 378417, 4108844; 378288, 4108608; 378131, 4108402; 377943, 4108197; 377878, 4108048; 377872, 4107868; 377869, 4107777; 378016, 4107622; 378227, 4107615; 378408, 4107610; 378649, 4107602; 378949, 4107502; 378970, 4107230; 378903, 4107022; 378751, 4106996; 378625, 4106820; 378498, 4106643; 378218, 4106381; 378030, 4106176; 377814, 4106032; 377809, 4105881; 377958, 4105817; 378200, 4105809; 378319, 4105745; 378467, 4105650; 378524, 4105558; 378552, 4105466; 378547, 4105316; 378483, 4105198; 378299, 4105113; 378206, 4105056; 378232, 4104904; 378410, 4104808; 378404, 4104628; 378341, 4104539; 378248, 4104452; 378126, 4104426; 378006, 4104459; 377826, 4104495; 377612, 4104412; 377461, 4104416; 377400, 4104418; 377007, 4104401; 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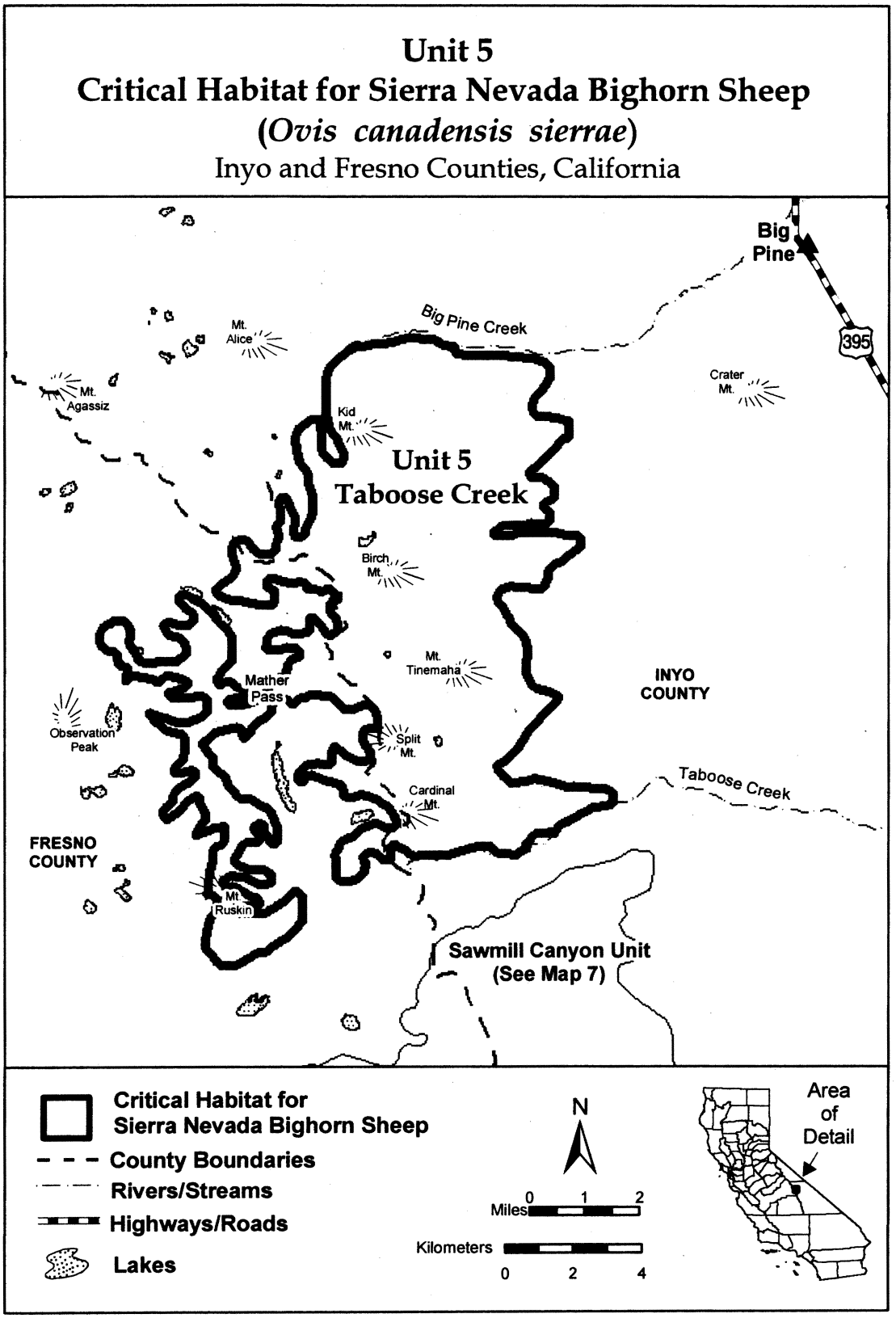
(ii) Note: Map of Unit 5 (Taboose Creek) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



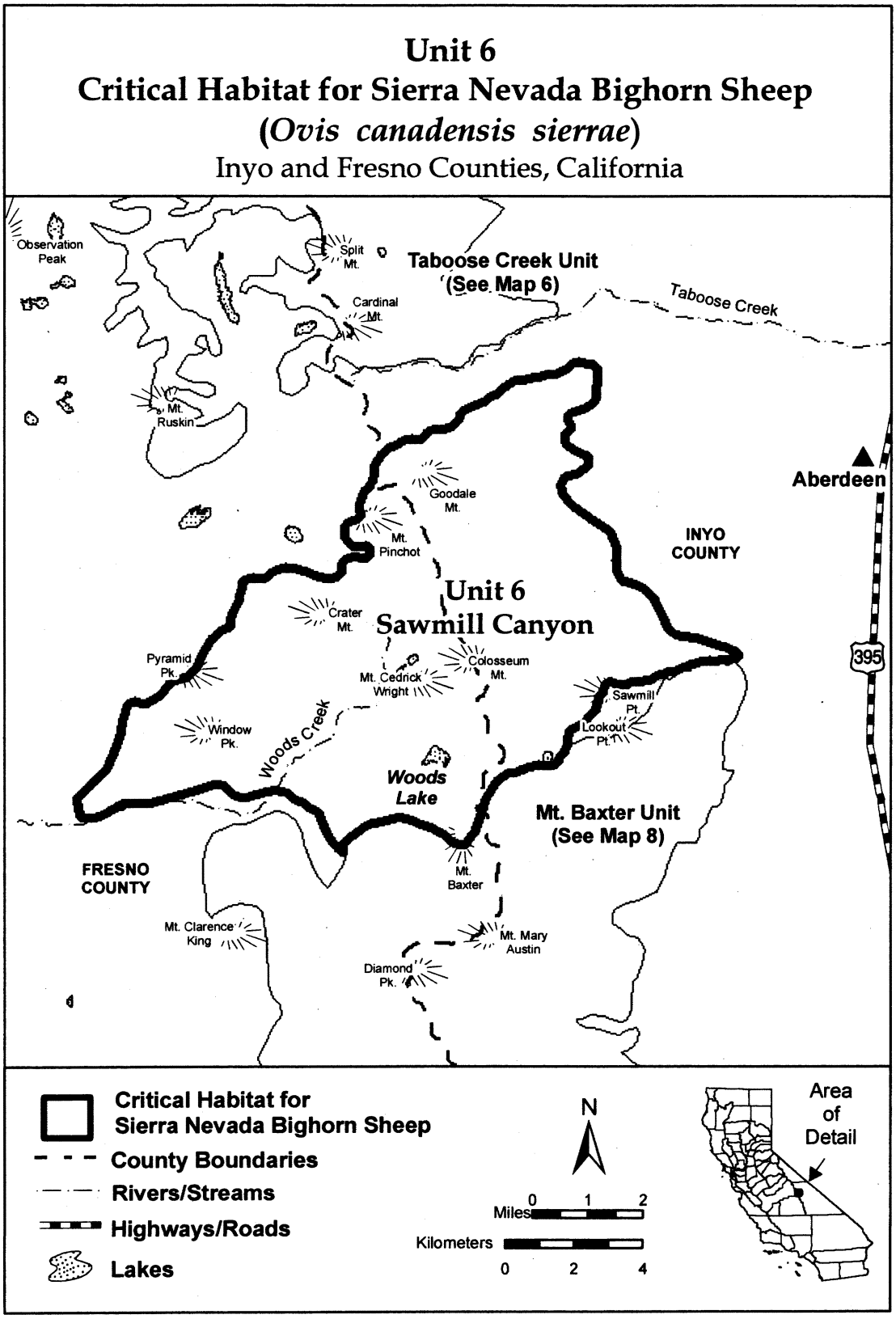
BILLING CODE 5310–55–C

(11) Unit 6 (Sawmill Canyon); Fresno and Inyo Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Pinchot, Aberdeen, Mount Clarence King and Kearsarge Peak. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 380512, 4083384; 380416, 4083207; 380321, 4083059; 380256, 4082940; 380133, 4082854; 379980, 4082799; 379859, 4082802; 379709, 4082837; 379527, 4082813; 379374, 4082757; 379265, 4082696; 379160, 4082674; 379038, 4082647; 378867, 4082568; 378795, 4082595; 378516, 4082363; 378327, 4082128; 378166, 4081831; 378065, 4081503; 377933, 4081146; 377834, 4080878; 377738, 4080700; 377610, 4080493; 377442, 4080457; 377339, 4080502; 377219, 4080536; 376984, 4080754; 376746, 4080882; 376628, 4080946; 376239, 4081079; 376030, 4081176; 375641, 4081278; 375519, 4081252; 375032, 4081147; 374788, 4081064; 374635, 4081009; 374295, 4080749; 373983, 4080457; 374028, 4080221; 373860, 4080371; 373684, 4080557; 373540, 4080772; 373455, 4080956; 373288, 4081413; 373050, 4081541; 372934, 4081695; 372606, 4081826; 372340, 4082015; 372244, 4082045; 372121, 4082062; 371940, 4082079; 371706, 4082035; 371156, 4081842; 370857, 4081941; 370503, 4082224; 370199, 4082263; 369698, 4082060; 368468, 4081749; 367602, 4081695; 367089, 4081384; 366778, 4081235; 366399, 4081303; 366264, 4081871; 366778, 4082344; 367143, 4082763; 367427, 4083358; 367548, 4083750; 367616, 4084237; 367778, 4084629; 367995, 4084724; 368279, 4084669; 368495, 4084764; 368738, 4084940; 368968, 4085237; 369198, 4085400; 369536, 4085481; 369769, 4085771; 369933, 4086158; 370188, 4086602; 370528, 4086832; 370742, 4086916; 370782, 4087216; 370816, 4087335; 370850, 4087454; 370978, 4087691; 371016, 4087931; 371050, 4088051; 371089, 4088321; 371394, 4088401; 371664, 4088363; 371848, 4088447; 371973, 4088564; 372034, 4088592; 372340, 4088703; 372640, 4088633; 372970, 4088562; 373118, 4088467; 373447, 4088367; 373629, 4088361; 373659, 4088360; 373750, 4088387; 373842, 4088414; 373968, 4088591; 373971, 4088682; 374007, 4088861; 374100, 4088949; 374253, 4089004; 374464, 4088967; 374645, 4088962; 374768, 4089048; 374801, 4089137; 374776, 4089289; 374686, 4089322; 374443, 4089269; 374323, 4089303; 374265, 4089365; 374147, 4089459; 374089, 4089551; 374033, 4089674; 374071, 4089913; 374164, 4090001; 374256, 4090058; 374379, 4090115; 374439, 4090113; 374535, 4090260; 374479, 4090413; 374486, 4090623; 374585, 4090891; 374648, 4090980; 374742, 4091067; 374806, 4091186; 374869, 4091274; 374873, 4091394; 374944, 4091724; 375104, 4092020; 375353, 4092253; 375506, 4092308; 375784, 4092480; 376026, 4092503; 376146, 4092469; 376298, 4092494; 376391, 4092582; 376454, 4092670; 376548, 4092757; 376700, 4092783; 376851, 4092778; 377125, 4092860; 377249, 4092946; 377375, 4093123; 377410, 4093272; 377564, 4093358; 377719, 4093474; 378147, 4093641; 378302, 4093756; 378486, 4093841; 378704, 4094045; 378951, 4094218; 379315, 4094267; 379468, 4094322; 379649, 4094316; 379894, 4094399; 380136, 4094421; 380289, 4094477; 380473, 4094561; 380690, 4094735; 380873, 4094790; 381053, 4094754; 381294, 4094716; 381411, 4094592; 381403, 4094351; 381394, 4094081; 381389, 4093900; 381322, 4093691; 381288, 4093572; 381041, 4093429; 380797, 4093346; 380552, 4093234; 380575, 4093022; 380630, 4092839; 380441, 4092604; 380495, 4092392; 380611, 4092238; 380818, 4092111; 380998, 4092045; 381116, 4091981; 381142, 4091829; 381107, 4091680; 380983, 4091593; 380798, 4091479; 380494, 4091398; 380431, 4091340; 380366, 4091191; 380361, 4091041; 380386, 4090859; 380532, 4090704; 380796, 4090454; 381061, 4090235; 381269, 4090108; 381504, 4089920; 381771, 4089761; 381913, 4089455; 381966, 4089213; 381956, 4088912; 381975, 4088550; 382088, 4088305; 382178, 4088272; 382237, 4088240; 382297, 4088238; 382537, 4088170; 382775, 4088042; 383039, 4087793; 383123, 4087580; 383323, 4087242; 383434, 4086907; 383638, 4086690; 383908, 4086621; 384089, 4086615; 384330, 4086578; 384450, 4086544; 384718, 4086445; 384987, 4086346; 385137, 4086311; 385317, 4086245; 385466, 4086180; 385554, 4086117; 385552, 4086057; 385399, 4085971; 385278, 4085975; 385186, 4085948; 385065, 4085922; 384944, 4085926; 384792, 4085900; 384672, 4085934; 384490, 4085910; 384369, 4085914; 384277, 4085856; 384185, 4085829; 384094, 4085802; 383696, 4085634; 383574, 4085607; 383452, 4085581; 383330, 4085525; 383178, 4085499; 383086, 4085472; 382963, 4085386; 382749, 4085332; 382537, 4085309; 382385, 4085283; 382231, 4085198; 381960, 4085206; 381842, 4085300; 381721, 4085304; 381628, 4085217; 381595, 4085127; 381529, 4084949; 381466, 4084890; 381429, 4084681; 381331, 4084443; 381176, 4084297; 381080, 4084150; 381016, 4084031; 380956, 4084033; 380773, 4083979; 380619, 4083893; 380582, 4083683; 380513, 4083414; returning to 380512, 4083384.

(ii) Note: Map of Unit 6 (Sawmill Canyon) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(12) Unit 7 (Mount Baxter); Fresno and Inyo Counties, California.

(i) From USGS 1:24,000 scale quadrangles Aberdeen, Mount Clarence King and Kearsarge Peak. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 374028, 4080221; 373983, 4080457; 374295, 4080749; 374635, 4081009; 374788, 4081064; 375032, 4081147; 375519, 4081252; 375641, 4081278; 376030, 4081176; 376239, 4081079; 376628, 4080946; 376746, 4080882; 376984, 4080754; 377219, 4080536; 377339, 4080502; 377442, 4080457; 377610, 4080493; 377738, 4080700; 377834, 4080878; 377933, 4081146; 378065, 4081503; 378166, 4081831; 378327, 4082128; 378516, 4082363; 378795, 4082595; 378867, 4082568; 379038, 4082647; 379160, 4082674; 379265, 4082696; 379374, 4082757; 379527, 4082813; 379709, 4082837; 379859, 4082802; 379980, 4082799; 380133, 4082854; 380256, 4082940; 380321, 4083059; 380416, 4083207; 380512, 4083384; 380727, 4083498; 380880, 4083553; 381125, 4083666; 381307, 4083660; 381760, 4083676; 382157, 4083814; 382374, 4083988; 382561, 4084163; 382902, 4084423; 382969, 4084632; 383097, 4084869; 383261, 4085256; 383416, 4085401; 383537, 4085398; 383692, 4085513; 383967, 4085625; 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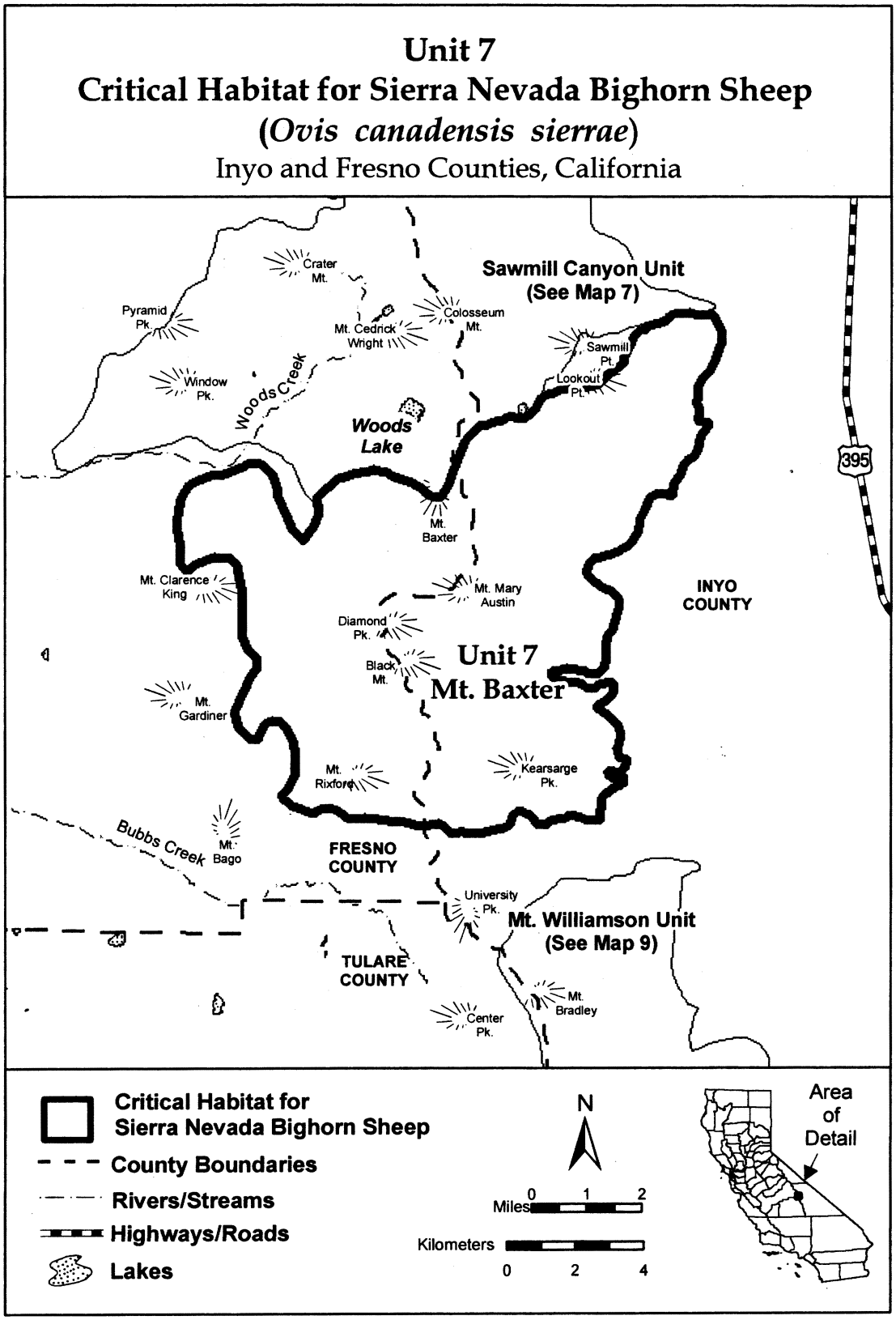
373259, 4079546; 373580, 4079174; 373739, 4079410; 373866, 4079617; 374025, 4079883; 374061, 4080063; 374035, 4080184; returning to 374028, 4080221.

(ii) Note: Map of Unit 7 (Mount Baxter) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(13) Unit 8 (Mount Williamson); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangle Kearsarge Peak, Mount Brewer, Mount Williamson, Manzanar, Mount Whitney and Mount Langley. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 384282, 4069770; 384492, 4069703; 384612, 4069699; 384763, 4069694; 384974, 4069658; 385152, 4069562; 385148, 4069441; 384994, 4069356; 384934, 4069358; 384840, 4069270; 384627, 4069217; 384623, 4069096; 384617, 4068886; 384580, 4068676; 384570, 4068345; 384463, 4067836; 384390, 4067447; 384376, 4066995; 384334, 4066635; 384385, 4066332; 384439, 4066120; 384495, 4065998; 384611, 4065813; 384637, 4065692; 384753, 4065538; 384810, 4065445; 384959, 4065380; 385077, 4065286; 384980, 4065079; 384910, 4064780; 384839, 4064450; 384862, 4064209; 384918, 4064056; 385100, 4064081; 385438, 4064281; 385590, 4064306; 385804, 4064360; 386017, 4064413; 386229, 4064437; 386532, 4064457; 386649, 4064333; 386769, 4064299; 386886, 4064205; 387004, 4064111; 387091, 4063988; 387176, 4063804; 387171, 4063654; 387194, 4063412; 387310, 4063258; 387397, 4063135; 387484, 4063042; 387660, 4062855; 387746, 4062702; 387828, 4062458; 387887, 4062396; 387883, 4062276; 387817, 4062097; 387843, 4061976; 387870, 4061855; 387898, 4061794; 387989, 4061791; 388140, 4061786; 388260, 4061782; 388319, 4061720; 388316, 4061630; 388344, 4061569; 388460, 4061414; 388579, 4061350; 388606, 4061229; 388631, 4061078; 388595, 4060898; 388555, 4060598; 388580, 4060417; 388546, 4060297; 388542, 4060177; 388630, 4060084; 388839, 4060017; 388928, 4059954; 388773, 4059838; 388618, 4059722; 388402, 4059579; 388397, 4059398; 388391, 4059217; 388447, 4059065; 388594, 4058940; 388774, 4058904; 388864, 4058871; 389100, 4058713; 389155, 4058531; 389363, 4058404; 389540, 4058278; 389596, 4058155; 389626, 4058124; 389745, 4058090; 389835, 4058057; 389834, 4058027; 389832, 4057967; 389829, 4057877; 389793, 4057697; 389668, 4057551; 389602, 4057372; 389476, 4057225; 389472, 4057075; 389497, 4056923; 389524, 4056832; 389490, 4056683; 389393, 4056505; 389239, 4056419; 389119, 4056423; 388970, 4056488; 388908, 4056460; 388935, 4056339; 388928, 4056128; 388917, 4055767; 388912, 4055616; 388873, 4055346; 388742, 4055019; 388615, 4054812; 388579, 4054633; 388511, 4054394; 388566, 4054241; 388716, 4054177; 388927, 4054170; 388956, 4054139; 389047, 4054136; 389195, 4054041; 389404, 4053974; 389523, 4053910; 389613, 4053877; 389637, 4053696; 389606, 4053667; 389515, 4053669; 389362, 4053584; 389208, 4053498; 388962, 4053355; 388780, 4053331; 388597, 4053277; 388261, 4053167; 388014, 4053024; 387829, 4052879; 387458, 4052620; 387303, 4052504; 387118, 4052389; 386845, 4052338; 386600, 4052255; 386356, 4052172; 386230, 4052026; 385918, 4051704; 385734, 4051619; 385550, 4051535; 385187, 4051516; 385006, 4051522; 384674, 4051532; 384346, 4051663; 384167, 4051759; 383870, 4051919; 383573, 4052079; 383456, 4052203; 383402, 4052416; 383346, 4052538; 383319, 4052629; 383116, 4052907; 382907, 4053004; 382548, 4053105; 382245, 4053085; 382121, 4052998; 381970, 4052973; 381696, 4052921; 381422, 4052870; 381087, 4052760; 380627, 4052563; 380323, 4052513; 380085, 4052610; 380029, 4052763; 379974, 4052945; 380013, 4053215; 380141, 4053422; 380360, 4053686; 380609, 4053919; 380948, 4054120; 381137, 4054355; 381414, 4054527; 381478, 4054645; 381571, 4054703; 381610, 4054972; 381611, 4055033; 381616, 4055183; 381592, 4055365; 381537, 4055547; 381513, 4055759; 381430, 4055972; 381345, 4056156; 381109, 4056344; 380873, 4056532; 380604, 4056631; 380274, 4056701; 380091, 4056647; 379968, 4056560; 379993, 4056409; 380049, 4056257; 380102, 4056044; 380036, 4055865; 379851, 4055751; 379547, 4055670; 379304, 4055647; 378973, 4055688; 378731, 4055665; 378518, 4055642; 378304, 4055558; 378158, 4055714; 378223, 4055862; 378114, 4056227; 377969, 4056443; 377946, 4056654; 378101, 4056770; 378405, 4056851; 378590, 4056965; 378715, 4057082; 378841, 4057259; 378934, 4057316; 379088, 4057402; 379180, 4057459; 379273, 4057546; 379521, 4057719; 379646, 4057866; 379741, 4058014; 379896, 4058129; 380108, 4058153; 380260, 4058178; 380561, 4058138; 380806, 4058251; 380993, 4058426; 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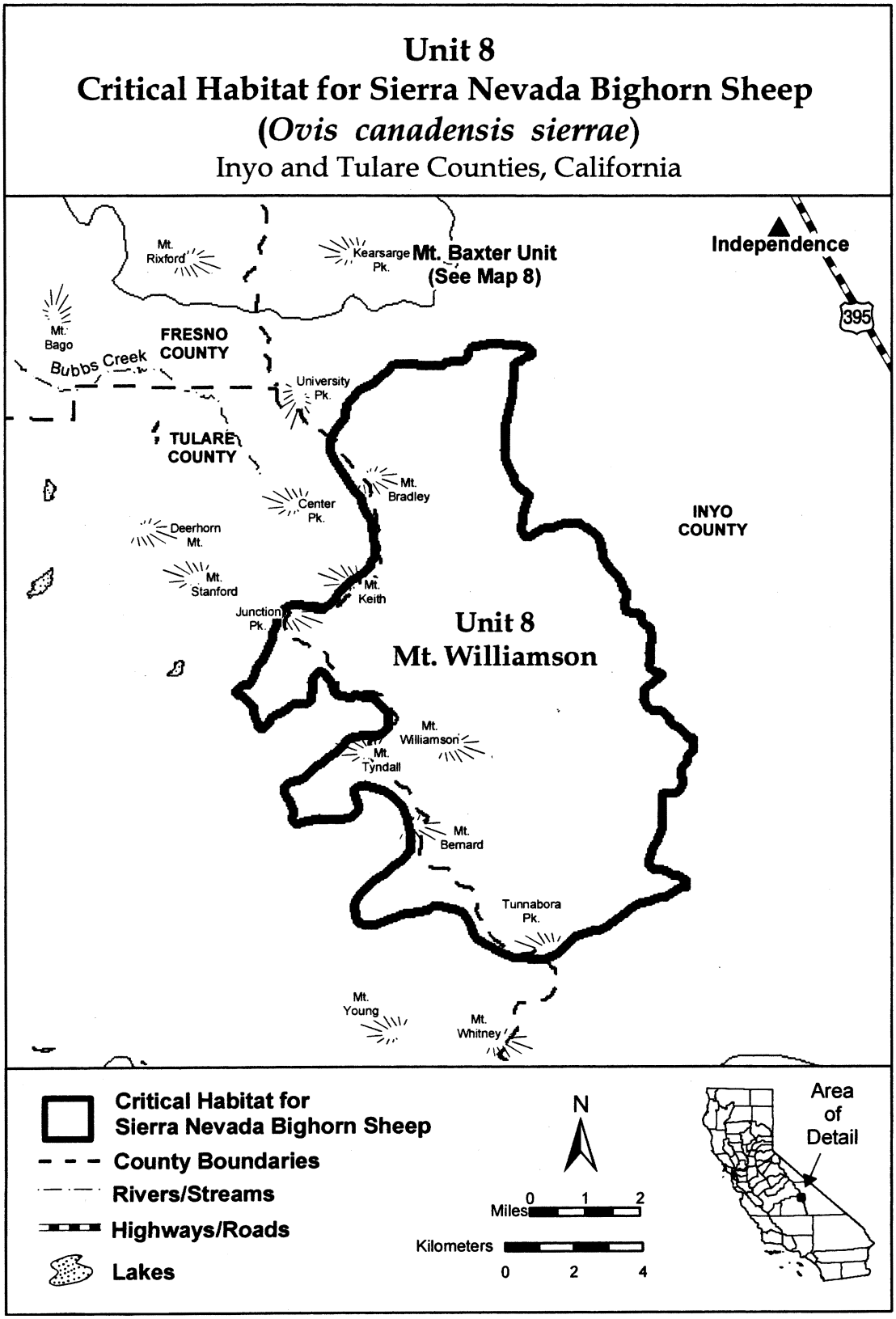
379672, 4062534; 379860, 4062739; 380015, 4062855; 380292, 4063027; 380417, 4063144; 380483, 4063322; 380579, 4063500; 380562, 4063922; 380460, 4064498; 380261, 4064896; 380149, 4065201; 379947, 4065478; 379629, 4065940; 379428, 4066278; 379342, 4066431; 379258, 4066644; 379299, 4066975; 379427, 4067211; 379584, 4067387; 379680, 4067565; 379718, 4067805; 379784, 4067983; 379940, 4068159; 380098, 4068365; 380252, 4068451; 380591, 4068651; 380653, 4068709; 380777, 4068826; 380840, 4068884; 380901, 4068912; 380964, 4069001; 381026, 4069059; 381120, 4069146; 381180, 4069144; 381242, 4069173; 381362, 4069169; 381453, 4069166; 381543, 4069163; 381785, 4069156; 381935, 4069121; 382146, 4069114; 382297, 4069109; 382358, 4069107; 382478, 4069104; 382539, 4069102; 382572, 4069191; 382725, 4069246; 382815, 4069244; 382906, 4069241; 383119, 4069294; 383210, 4069322; 383243, 4069411; 383310, 4069590; 383403, 4069677; 383616, 4069731; 383828, 4069754; 383919, 4069751; 384010, 4069748; returning to 384282, 4069770.

(ii) Note: Map of Unit 8 (Mount Williamson) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



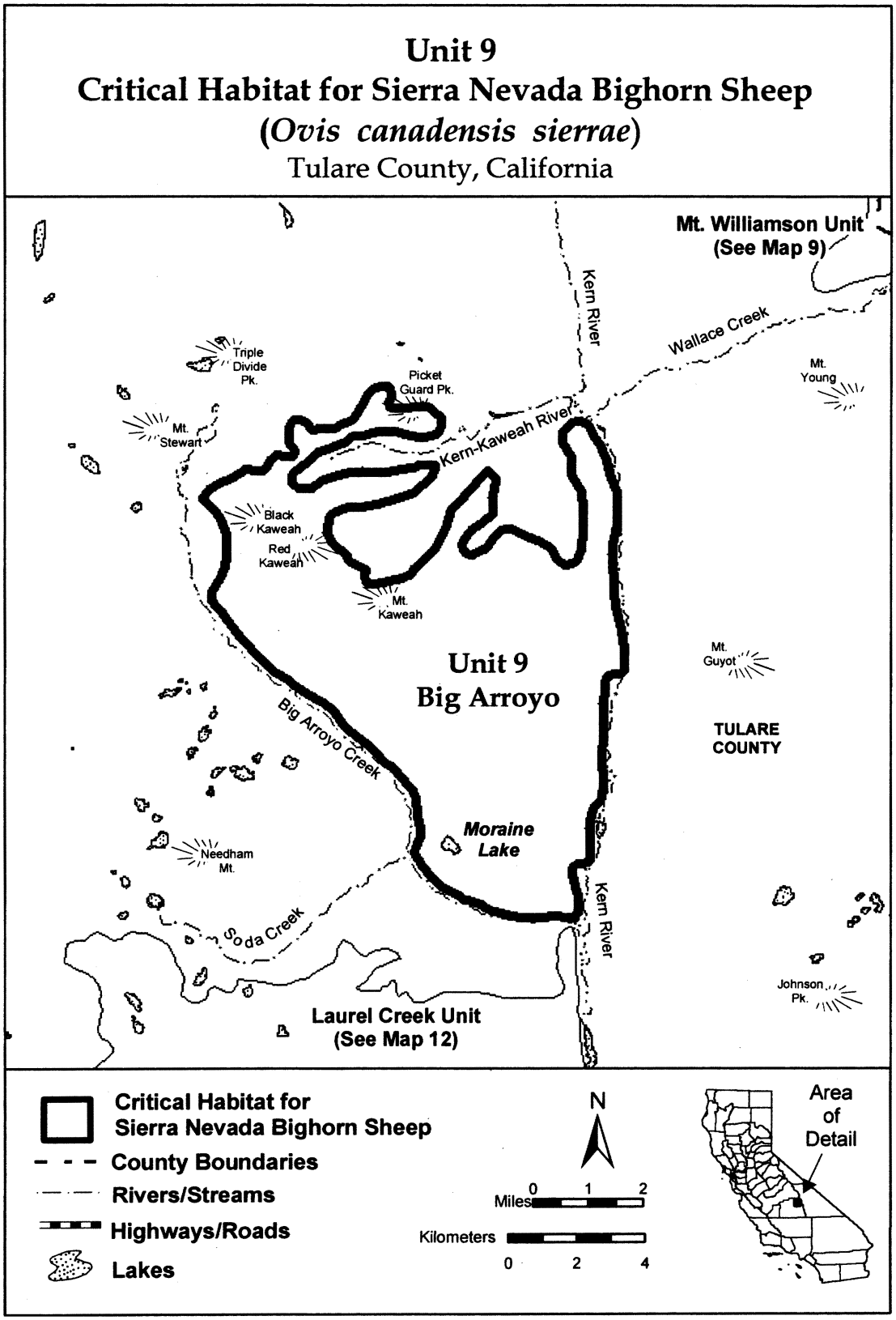
BILLING CODE 5310–55–C

(14) Unit 9 (Big Arroyo); Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Triple Divide Peak, Mount Kaweah, and Chagoopa Falls. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 367856, 4049078; 368038, 4049073; 368311, 4049124; 368644, 4049144; 368824, 4049108; 369090, 4048919; 369207, 4048795; 369203, 4048644; 369201, 4048584; 369169, 4048525; 369072, 4048347; 368645, 4048210; 368224, 4048284; 367925, 4048383; 367593, 4048394; 367503, 4048397; 367260, 4048374; 366955, 4048293; 366591, 4048244; 366345, 4048102; 365916, 4047904; 365549, 4047765; 365361, 4047560; 364989, 4047270; 364864, 4047124; 364797, 4046915; 364973, 4046759; 365395, 4046715; 365735, 4046946; 366102, 4047085; 366467, 4047164; 366891, 4047211; 367465, 4047193; 367920, 4047269; 368407, 4047374; 368560, 4047429; 369013, 4047415; 368911, 4047057; 368632, 4046825; 368322, 4046593; 367802, 4046399; 367406, 4046291; 366767, 4046130; 366404, 4046141; 366068, 4046031; 365913, 4045886; 365868, 4045435; 366038, 4045068; 366392, 4044786; 366506, 4044572; 367012, 4044315; 366916, 4044167; 366999, 4043924; 367179, 4043858; 367575, 4043966; 367970, 4044044; 368277, 4044185; 368402, 4044331; 368714, 4044653; 369028, 4045005; 369348, 4045597; 369454, 4046076; 369830, 4046486; 370175, 4046897; 370518, 4047247; 370783, 4047028; 370644, 4046430; 370695, 4046127; 370690, 4045977; 370534, 4045831; 370317, 4045657; 370041, 4045515; 369914, 4045338; 369817, 4045130; 369781, 4044951; 369897, 4044797; 370077, 4044731; 370292, 4044844; 370507, 4044958; 370665, 4045194; 370946, 4045487; 371279, 4045506; 371607, 4045345; 372024, 4045152; 372379, 4044929; 372551, 4044623; 372817, 4044434; 373092, 4044546; 373223, 4044843; 373304, 4045503; 373323, 4046105; 373219, 4046650; 372992, 4047109; 372919, 4047684; 372692, 4048143; 372701, 4048414; 373011, 4048675; 373283, 4048667; 373432, 4048602; 373602, 4048265; 373805, 4047988; 373975, 4047621; 374080, 4047105; 374277, 4046647; 374322, 4046164; 374308, 4045712; 374200, 4045174; 374158, 4044783; 374181, 4044572; 374200, 4044210; 374217, 4043787; 374236, 4043425; 374288, 4043152; 374391, 4042607; 374467, 4042122; 374516, 4041759; 374537, 4041488; 374470, 4041279; 374347, 4041192; 374136, 4041229; 374014, 4041173; 373950, 4041054; 373904, 4040574; 373897, 4040333; 373915, 4039971; 373903, 4039579; 373888, 4039098; 373877, 4038737; 373895, 4038375; 373915, 4038043; 373877, 4037773; 373839, 4037533; 373619, 4037269; 373549, 4036970; 373479, 4036670; 373530, 4036368; 373518, 4035976; 373478, 4035676; 373263, 4035563; 373112, 4035567; 373019, 4035480; 373040, 4035208; 373120, 4034844; 373172, 4034601; 373171, 4034571; 373195, 4034360; 373188, 4034149; 373125, 4034061; 373093, 4034001; 372881, 4033978; 372671, 4034015; 372489, 4034020; 372278, 4034027; 372096, 4034002; 372005, 4034005; 371642, 4033987; 371403, 4034054; 371161, 4034062; 371012, 4034127; 370652, 4034198; 370474, 4034294; 370386, 4034387; 369997, 4034520; 369847, 4034555; 369670, 4034681; 369253, 4034875; 368900, 4035187; 368785, 4035372; 368611, 4035588; 368408, 4035866; 368444, 4036045; 368544, 4036343; 368613, 4036612; 368531, 4036916; 368483, 4037309; 368432, 4037582; 368318, 4037827; 368114, 4038044; 367910, 4038291; 367764, 4038447; 367616, 4038542; 367411, 4038759; 367265, 4038914; 366971, 4039194; 366588, 4039508; 366295, 4039788; 366005, 4040159; 365710, 4040409; 365323, 4040602; 364940, 4040885; 364704, 4041073; 364407, 4041233; 364172, 4041451; 363937, 4041670; 363675, 4041979; 363294, 4042383; 363033, 4042722; 362830, 4043000; 362598, 4043309; 362513, 4043462; 362550, 4043702; 362773, 4044056; 362873, 4044354; 362976, 4044743; 362987, 4045104; 362907, 4045438; 362796, 4045743; 362624, 4046049; 362419, 4046267; 362243, 4046423; 362434, 4046718; 362771, 4046888; 363048, 4047030; 363355, 4047201; 363540, 4047316; 363809, 4047217; 363990, 4047211; 364085, 4047329; 364213, 4047566; 364430, 4047740; 364638, 4047643; 364880, 4047635; 364946, 4047814; 364918, 4047875; 364772, 4048061; 364751, 4048332; 364757, 4048543; 364885, 4048750; 365096, 4048743; 365274, 4048647; 365419, 4048432; 365540, 4048458; 365753, 4048482; 365964, 4048475; 366116, 4048500; 366302, 4048645; 366454, 4048671; 366638, 4048755; 366736, 4048993; 366926, 4049288; 367023, 4049466; 367148, 4049613; 367333, 4049727; 367635, 4049718; 367747, 4049443; 367652, 4049296; 367648, 4049175; 367736, 4049082; returning to 367856, 4049078.

(ii) Note: Map of Unit 9 (Big Arroyo) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(15) Unit 10 (Mount Langley); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Whitney, Mount Langley, Lone Pine, Johnson Peak, Cirque Peak, and Bartlett. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 391201, 4048676; 391835, 4048656; 392289, 4048672; 392648, 4048570; 393008, 4048499; 393517, 4048332; 393840, 4048051; 393861, 4047749; 393701, 4047453; 393997, 4047263; 394301, 4047313; 394691, 4047241; 394959, 4047112; 394980, 4046810; 394761, 4046576; 394545, 4046432; 394209, 4046322; 393872, 4046182; 393805, 4045973; 393952, 4045848; 394346, 4045866; 394557, 4045859; 394797, 4045822; 394914, 4045698; 395096, 4045722; 395312, 4045836; 395435, 4045922; 395609, 4045676; 395357, 4045352; 395142, 4045239; 394955, 4045064; 394737, 4044860; 394607, 4044562; 394630, 4044351; 394785, 4044466; 394972, 4044641; 395189, 4044815; 395465, 4044957; 395741, 4045069; 396017, 4045211; 396292, 4045323; 396624, 4045312; 396865, 4045275; 397011, 4045120; 396916, 4044972; 396912, 4044852; 396906, 4044671; 396989, 4044427; 397139, 4044392; 397225, 4044239; 397130, 4044092; 397004, 4043945; 396941, 4043856; 396910, 4043827; 396816, 4043710; 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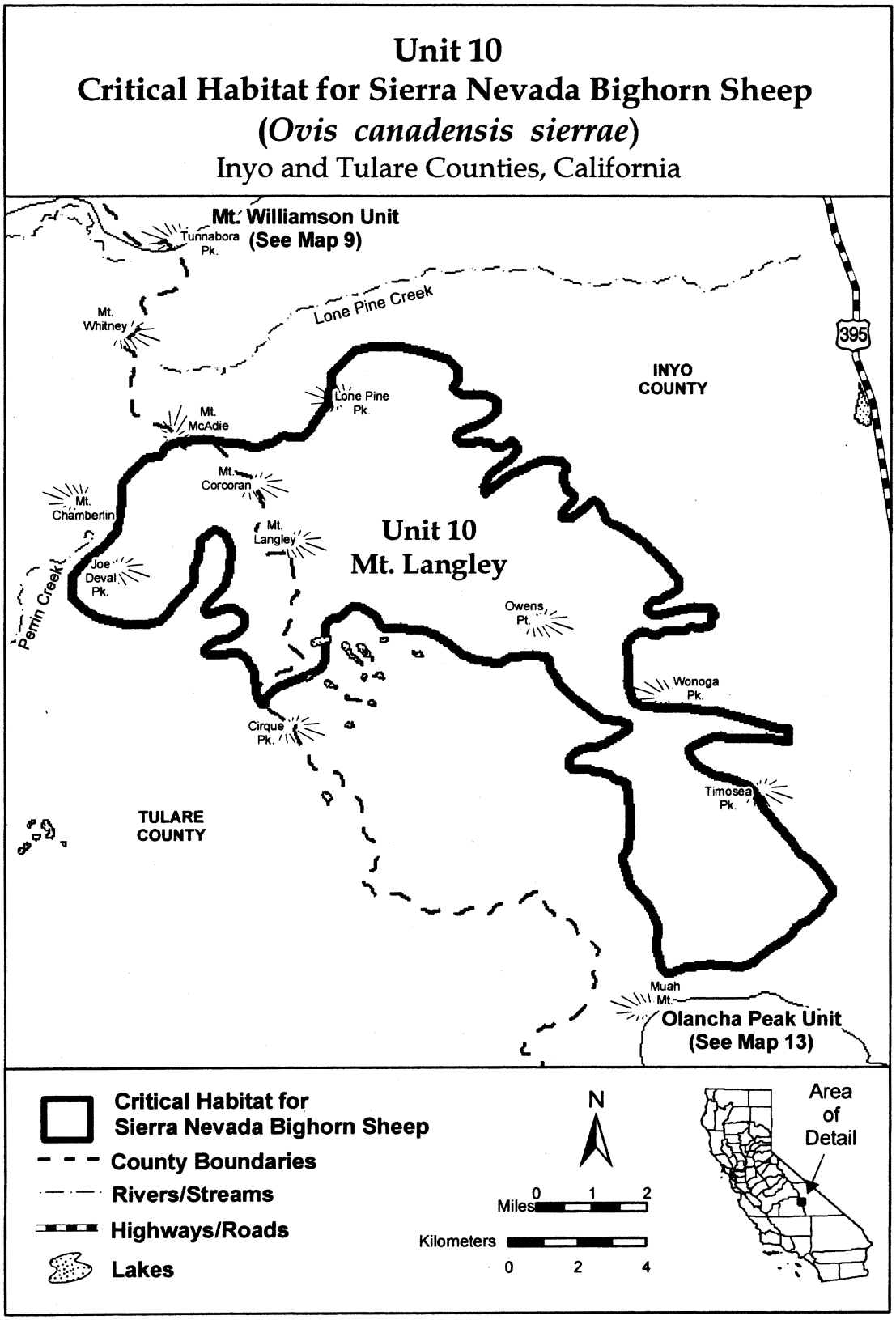
(ii) Note: Map of Unit 10 (Mount Langley) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(16) Unit 11 (Laurel Creek); Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Mineral King, Chagoopa Falls, Quinn Peak, and Kern Lake. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 373174, 4031891; 373186, 4031558; 373154, 4031248; 373234, 4030979; 373246, 4030646; 373240, 4030446; 373299, 4030200; 373294, 4030045; 373311, 4029867; 373368, 4029577; 373315, 4029290; 373265, 4029114; 373238, 4028981; 373232, 4028782; 373228, 4028671; 373244, 4028471; 373261, 4028292; 373235, 4028160; 373118, 4027986; 373114, 4027853; 373201, 4027784; 373307, 4027625; 373303, 4027492; 373295, 4027248; 373288, 4027026; 373370, 4026802; 373343, 4026647; 373335, 4026403; 373361, 4025803; 373349, 4025426; 373426, 4025046; 373542, 4024488; 373421, 4024158; 373270, 4024319; 373084, 4024791; 372982, 4025082; 372972, 4025460; 373002, 4025726; 372967, 4026015; 372813, 4026087; 372622, 4026381; 372567, 4026738; 372492, 4027184; 372494, 4027251; 372544, 4027449; 372683, 4027600; 372797, 4027685; 372844, 4027773; 372868, 4027839; 372850, 4027950; 372627, 4027957; 372493, 4027939; 372334, 4027833; 372088, 4027819; 371867, 4027848; 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358592, 4033348; 358837, 4033362; 358952, 4033470; 359201, 4033617; 359530, 4033452; 359660, 4033336; 359907, 4033395; 359976, 4033482; 360158, 4033587; 360425, 4033579; 360624, 4033550; 360800, 4033478; 361106, 4033313; 361280, 4033175; 361405, 4032904; 361468, 4032769; 361508, 4032613; 361594, 4032521; 361719, 4032251; 361664, 4031919; 361657, 4031698; 361918, 4031512; 362074, 4031507; 362141, 4031505; 362367, 4031609; 362415, 4031740; 362396, 4031852; 362578, 4031957; 362711, 4031931; 362842, 4031860; 362907, 4031814; 363107, 4031785; 363177, 4031894; 363224, 4031959; 363248, 4032025; 363250, 4032092; 363320, 4032178; 363564, 4032148; 363742, 4032143; 363940, 4032092; 364228, 4032039; 364294, 4032015; 364472, 4032009; 364583, 4032005; 364830, 4032064; 364966, 4032127; 365212, 4032186; 365326, 4032249; 365371, 4032269; 365553, 4032397; 365712, 4032503; 365780, 4032523; 365916, 4032607; 366029, 4032671; 366122, 4032779; 366147, 4032889; 366152, 4033022; 366154, 4033088; 366317, 4033327; 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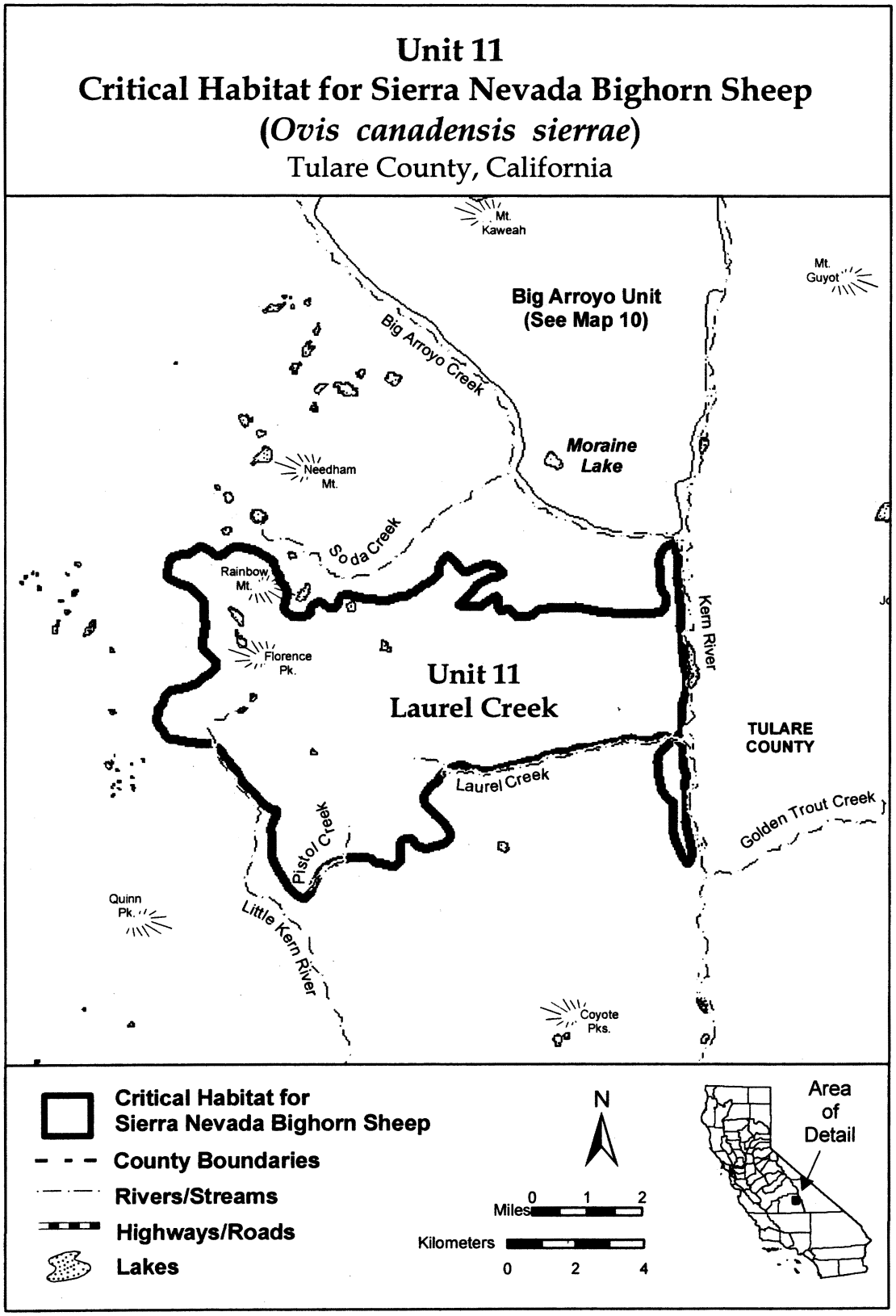
372548, 4032533; 372578, 4032776; 372564, 4033021; 372571, 4033264; 372624, 4033507; 372783, 4033635; 372942, 4033719; 373052, 4033671; 373028, 4033628; 373070, 4033537; 373088, 4033404; 373101, 4033115; 373095, 4032937; 373087, 4032671; 373125, 4032470; 373138, 4032159; returning to 373174, 4031891.

(ii) Note: Map of Unit 11 (Laurel Creek) for Sierra Nevada bighorn sheep follows:

BILLING CODE 5310–55–P



BILLING CODE 5310–55–C

(17) Unit 12 (Olancha Peak); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangles Cirque Peak, Bartlett, Templeton Mountain, Olancha, and Haiwee Pass. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 403133, 4029453; 403358, 4029282; 403619, 4029209; 403945, 4029133; 404369, 4029021; 404658, 4028816; 404816, 4028614; 405104, 4028376; 405331, 4028270; 405620, 4028065; 405682, 4027932; 405805, 4027666; 405734, 4027504; 405863, 4027434; 406060, 4027428; 406290, 4027421; 406385, 4027320; 406479, 4027153; 406544, 4027151; 406674, 4027081; 406738, 4027046; 406835, 4026978; 406993, 4026776; 407086, 4026610; 407116, 4026510; 407176, 4026345; 407206, 4026245; 407201, 4026082; 407131, 4025953; 407161, 4025854; 407158, 4025755; 407190, 4025722; 407251, 4025589; 407282, 4025522; 407279, 4025424; 407210, 4025328; 407206, 4025197; 407203, 4025099; 407234, 4025032; 407263, 4024933; 407291, 4024768; 407287, 4024637; 407250, 4024507; 407178, 4024313; 407042, 4024153; 406975, 4024123; 406909, 4024125; 406811, 4024128; 406841, 4024061; 406903, 4023928; 406933, 4023829; 406963, 4023763; 407057, 4023596; 407118, 4023463; 407282, 4023458; 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401165, 4011820; 401032, 4011759; 400764, 4011604; 400498, 4011514; 400367, 4011518; 400040, 4011561; 399878, 4011631; 399816, 4011764; 399787, 4011896; 399790, 4011995; 399794, 4012093; 399732, 4012226; 399669, 4012326; 399540, 4012396; 399444, 4012464; 399349, 4012598; 399327, 4012927; 399402, 4013219; 399406, 4013350; 399445, 4013546; 399515, 4013674; 399520, 4013838; 399557, 4013968; 399563, 4014164; 399600, 4014294; 399608, 4014556; 399611, 4014654; 399615, 4014785; 399590, 4015016; 399595, 4015179; 399404, 4015382; 399177, 4015487; 399182, 4015618; 399286, 4015812; 399294, 4016073; 399398, 4016234; 399566, 4016360; 399635, 4016456; 399737, 4016551; 399901, 4016546; 399960, 4016347; 400087, 4016212; 400183, 4016111; 400341, 4015910; 400463, 4015611; 400557, 4015477; 400849, 4015337; 400916, 4015400; 401120, 4015590; 401351, 4015648; 401360, 4015910; 401368, 4016172; 401440, 4016367; 401443, 4016465; 401381, 4016598; 401321, 4016764; 401226, 4016898; 401164, 4016998; 401067, 4017066; 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(ii) Note: Map of Unit 12 (Olancha Peak) for Sierra Nevada bighorn sheep follows:

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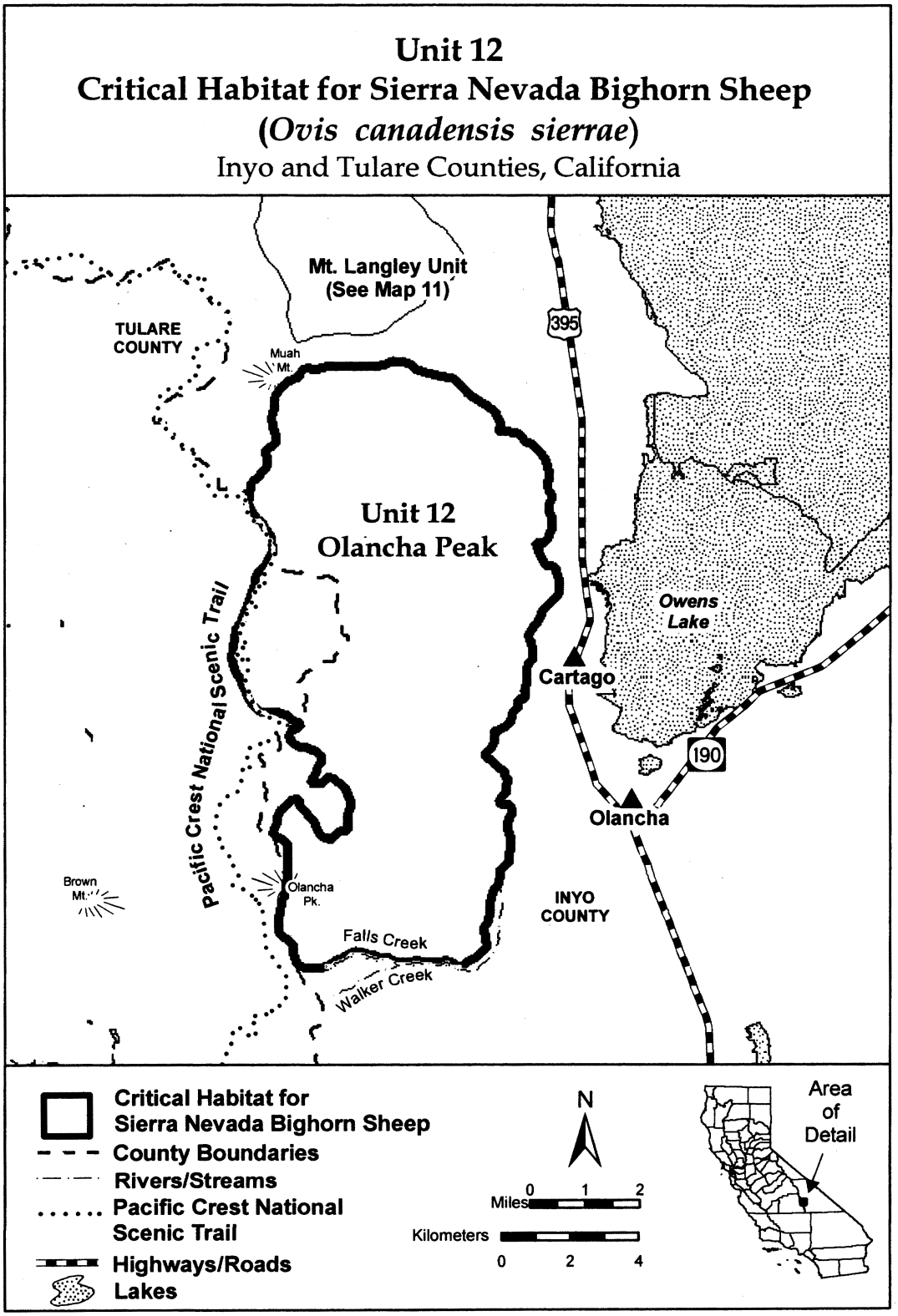

* * * * *

Dated: July 16, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–16813 Filed 8–4–08; 8:45 am]

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