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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, March 17, 2009
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

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Federal Register
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Tuesday, March 10, 2009

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206–AE95

Absence and Leave; Sick Leave; Correction

AGENCY: U.S. Office of Personnel Management.

ACTION: Correcting amendment.

SUMMARY: The U.S. Office of Personnel Management is correcting references to a non-existent section number in the recredit of sick leave regulations issued on December 2, 1994 (59 FR 62271).

DATES: Effective March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 2, 1994, the U.S. Office of Personnel Management issued final regulations concerning the recredit of sick leave (59 FR 62271). As a part of those regulations, § 630.502(b) and (c) made reference to § 630.407. On August 17, 2006, subpart D of this part was revised and § 630.407 was renumbered as § 630.405, with no change to the text (71 FR 48696). That document failed to amend § 630.502(b) and (c), which continue to reference the non-existent § 630.407. Consequently, we are publishing this correction notice to amend § 630.502(b) and (c) to replace the non-existent § 630.407 with § 630.405.

List of Subjects in 5 CFR Part 630

Government employees.

■ Accordingly, 5 CFR part 630 is corrected by making the following correcting amendments:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat. 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart E—Recredit of Leave

■ 2. Revise paragraphs (b) and (c) of § 630.502 to read as follows:

§ 630.502 Sick leave recredit.

* * * * *

(b) Except as provided in § 630.405 and in paragraph (c) of this section, an employee who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

(c) Except as provided in § 630.405, an employee of the government of the District of Columbia who was first employed by the government of the District of Columbia before October 1, 1987, who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

* * * * *

U.S. Office of Personnel Management.

Jerome D. Mikowicz,

Deputy Associate Director, Center for Pay and Leave Administration.

[FR Doc. E9–5023 Filed 3–9–09; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206–AL26

Emergency Leave Transfer Program

AGENCY: U.S. Office of Personnel Management.

ACTION: Correcting amendment.

SUMMARY: The U.S. Office of Personnel Management (OPM) issued final regulations on November 4, 2008 on the Emergency Leave Transfer Program (73 FR 65496). This notice corrects an omission in the final regulations that would permit an agency's leave bank to donate annual leave to an emergency leave transfer program administered by another agency during a Governmentwide transfer of emergency leave coordinated by OPM. This language was dropped inadvertently in the final rule when this section was rewritten slightly.

DATES: Effective March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2008, the U.S. Office of Personnel Management (OPM) issued final regulations on the Emergency Leave Transfer Program (73 FR 65496). In the final rule, we changed the language of § 630.1104 of title 5, Code of Federal Regulations, slightly from the language of that section in the proposed regulations. In doing so, we deleted inadvertently language that would allow an agency's leave bank to donate annual leave to an emergency leave transfer program administered by another agency during a Governmentwide transfer of emergency leave coordinated by OPM. Consequently, we are publishing this correction notice to reinsert this language.

List of Subjects in 5 CFR Part 630

Government employees.

■ Accordingly, 5 CFR part 630 is corrected by making the following correcting amendments:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Public Law 108–411, 118 Stat. 2312; § 630.301 also issued under Public Law 103–356, 108 Stat. 3410 and Public Law 108–411, 118 Stat. 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Public Law 102–484, 106 Stat. 2722, and Public Law 103–337, 108 Stat. 2663; subpart D also issued under Public Law 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Public Law 100–566, 102 Stat. 2834, and Public Law 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Public Law 100–566, and Public Law 103–103; subpart K also issued under Public Law 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Public Law 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Public Law 102–25, 105 Stat. 92.

Subpart K—Emergency Leave Transfer Program

■ 2. Section § 630.1104 is revised to read as follows:

§ 630.1104 Donations from a leave bank to an emergency leave transfer program.

A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by its own agency, or, during a Governmentwide transfer of emergency leave coordinated by OPM, to an emergency leave transfer program administered by another agency. Donated annual leave not used by an emergency leave recipient must be returned to the leave bank as provided in § 630.1117.

U.S. Office of Personnel Management.

Jerome D. Mikowicz,

Deputy Associate Director, Center for Pay and Leave Administration.

[FR Doc. E9–5027 Filed 3–9–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0189; Directorate Identifier 2009–CE–011–AD; Amendment 39–15831; AD 2009–05–07]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

Ambiguous information in the adjustment procedure for the stick-pusher cable tension and stick-pusher cable tension relaxation with time were identified as contributing factors.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 30, 2009.

On March 30, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by April 9, 2009.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On March 5, 2008, we issued AD 2008–06–17, Amendment 39–15429 (73 FR 13438; March 13, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–06–17, the new MCAI adds affected serial numbers, adds the Model PC–12/47E, and references new service information that supersedes old service information referenced in AD 2008–06–17. The inspection and corrective action in AD 2008–06–17 did not fully address the unsafe condition. The new service bulletin calls out an improved inspection and corrective action procedures to address the unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2009–0040, dated February 20, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

Ambiguous information in the adjustment procedure for the stick-pusher cable tension and stick-pusher cable tension relaxation with time were identified as contributing factors.

For the reason described above, this Airworthiness Directive (AD) requires an inspection of the stick-pusher servo-cables installation and adjustment of the stick-pusher cable tension, as necessary.

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

Relevant Service Information

PILATUS AIRCRAFT LTD. has issued PC12 Service Bulletin No. 27–020, Revision No. 1, dated January 30, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if uncorrected, the possible jamming of the loose stick pusher cable could lead to loss of elevator control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0189; Directorate Identifier 2009–CE–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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 that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15429 (73 FR 13438; March 13, 2008), and adding the following new AD:

2009–05–07 Pilatus Aircraft Ltd.: Amendment 39–15831; Docket No. FAA–2009–0189; Directorate Identifier 2009–CE–011–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2009.

Affected ADs

(b) This AD supersedes AD 2008–06–17, Amendment 39–15429.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category.

(1) Models PC–12, PC–12/45, PC–12/47, manufacturer serial numbers (MSNs) 101 through 544, and MSNs 546 through 888; and

(2) Model PC–12/47E, manufacturer serial number 545, and MSNs 1001 through 1101.

Subject

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

Reason

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

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

Ambiguous information in the adjustment procedure for the stick-pusher cable tension and stick-pusher cable tension relaxation with time were identified as contributing factors.

For the reason described above, this Airworthiness Directive (AD) requires an

inspection of the stick-pusher servo-cables installation and adjustment of the stick-pusher cable tension, as necessary.

Actions and Compliance

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

(1) Within 150 hours time-in-service (TIS) or 30 days after March 30, 2009 (the effective date of this AD), whichever occurs first, inspect the stick-pusher servo-cables for correct installation, position, and tension in accordance with the Accomplishment Instructions of PILATUS AIRCRAFT LTD. PC12 Service Bulletin No. 27–020, Revision No. 1, dated January 30, 2009.

(2) If any discrepancy is found as a result of the inspection required by paragraph (f)(1) of this AD, before further flight, do all corrective actions in accordance with the Accomplishment Instructions of PILATUS AIRCRAFT LTD. PC12 Service Bulletin No. 27–020, Revision No. 1, dated January 30, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI does not supersede the previous MCAI on which FAA AD 2008–06–17 was based because it was a one-time inspection. For consistency within the FAA's regulatory system and to avoid confusion, this AD supersedes AD 2008–06–17.

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0040, dated February 20, 2009, and PILATUS AIRCRAFT LTD. PC12 Service Bulletin No. 27–020, Revision No. 1, dated January 30, 2009, for related information.

Material Incorporated by Reference

(i) You must use PILATUS AIRCRAFT LTD. PC12 Service Bulletin No. 27–020, Revision No. 1, dated January 30, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; *telephone:* +41 (0)41 619 62 08; *fax:* +41 (0)41 619 73 11; *Internet: http://www.pilatus-aircraft.com/*, or *e-mail: SupportPC12@pilatus-aircraft.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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 Kansas City, Missouri on February 25, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–4437 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0980; Directorate Identifier 2008–NM–008–AD; Amendment 39–15834; AD 2009–05–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes, and Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A330, A340–200, and A340–300 series airplanes. That AD currently requires repetitive inspections of a certain bracket that attaches the flight deck instrument panel to the airplane structure; related investigative and corrective actions if necessary; and replacement of the existing bracket with a titanium-reinforced bracket, which ends the repetitive inspections in the existing AD. This new AD adds requirements only for airplanes on which the existing bracket was replaced with a titanium-reinforced bracket in accordance with the existing AD. The additional requirement is a one-time inspection to determine if certain fasteners are broken or cracked, and corrective actions if necessary. This AD results from a report that incorrect torque values could damage the bracket. We are issuing this AD to prevent a cracked bracket. Failure of this bracket, combined with failure of the horizontal beam, could result in collapse of the left part of the flight deck instrument panel, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective April 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 14, 2009.

On February 8, 2007 (72 FR 256, January 4, 2007), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD.

ADDRESSES: For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Document 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–26–12, amendment 39–14870 (72 FR 256, January 4, 2007), for certain Airbus Model A330, A340–200, and A340–300 series airplanes. AD 2006–26–12 requires repetitive inspections of a certain bracket that attaches the flight deck instrument panel to the airplane structure; replacement of the bracket with a new, improved bracket; and related investigative and corrective actions if necessary. AD 2006–26–12 further requires replacement of the existing bracket with a titanium-reinforced bracket, which ends the repetitive inspections. That NPRM was published in the **Federal Register** on September 17, 2008 (73 FR 53770). That NPRM proposed to add requirements only for airplanes on which the existing bracket was replaced with a titanium-reinforced bracket in accordance with the existing AD. The additional requirement is a one-time inspection to determine if certain fasteners are broken or cracked, and corrective actions if necessary.

Explanation of Change to Paragraph (f) of This AD

We have removed the ''Service Bulletin Reference'' paragraph from this AD. (That paragraph was identified as paragraph (f) in the NPRM.) Instead, we have spelled out the service bulletin citations throughout this AD.

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. This AD affects about 24 Model A330 series airplanes of U.S. registry. There are currently no affected Model A340–200 and –300 series airplanes of U.S. registry. However, if one of these airplanes is imported and put on the U.S. Register in the future, these cost estimates would also apply to those airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspections (required by AD 2006–26–12) ...	1	$80	$0	$80 per inspection cycle.	$1,920 per inspection cycle.
Replacement and investigative actions (required by AD 2006–26–12).	9	80	330	$1,050	$25,200.
One-time inspection (new action)	2	80	0	$160	Up to $3,840.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14870 (72 FR 256, January 4, 2007) and by adding the following new airworthiness directive (AD):

2009–05–10 Airbus: Amendment 39–15834. Docket No. FAA–2008–0980; Directorate Identifier 2008–NM–008–AD.

Effective Date

(a) This AD becomes effective April 14, 2009.

Affected ADs

(b) This AD supersedes AD 2006–26–12.

Applicability

(c) This AD applies to all Airbus Model A330 airplanes, and Model A340–200 and A340–300 series airplanes; certificated in any category; except those airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which Airbus Modification 53446 has been incorporated in production.

(2) Model A330 airplanes on which Airbus Mandatory Service Bulletin A330–25–3249, Revision 01, dated July 10, 2007, has been embodied in service.

(3) Model A340–200 and –300 series airplanes on which Airbus Mandatory Service Bulletin A340–25–4245, Revision 01, dated July 10, 2007, has been embodied in service.

Unsafe Condition

(d) This AD results from a report that incorrect torque values could damage a certain bracket that attaches the flight deck instrument panel to the airplane structure. We are issuing this AD to prevent a cracked bracket. Failure of this bracket, combined with failure of the horizontal beam, could result in collapse of the left part of the flight deck instrument panel, and consequent reduced controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 2006–26–12

Initial Inspection

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, perform a detailed inspection of the bracket having part number (P/N) F2511012920000, which attaches the flight deck instrument panel to the airplane structure, in accordance with Airbus Mandatory Service Bulletin A330–25–3227 or A340–25–4230, both Revision 01, both dated May 3, 2005, as applicable.

(1) For Model A330 series airplanes: Prior to the accumulation of 16,500 total flight cycles, or within 60 days after April 25, 2005 (the effective date of AD 2005–06–08, amendment 39–14016, which was superseded by AD 2006–26–12), whichever is later.

(2) For Model A340–200 and –300 series airplanes: Prior to the accumulation of 9,700 total flight cycles, or within 2,700 flight cycles after April 25, 2005, whichever is later.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

No Cracking/Repetitive Inspections

(g) If no crack is found during the initial inspection required by paragraph (f) of this AD: Repeat the inspection thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with Airbus Mandatory Service Bulletin A330–25–3227 or A340–25–4230, both Revision 01, both dated May 3, 2005, as applicable, until the replacement specified in paragraph (j) of this AD has been accomplished.

(1) For Model A330 series airplanes: Intervals not to exceed 13,800 flight cycles.

(2) For Model A340–200 and –300 series airplanes: Intervals not to exceed 7,000 flight cycles.

Crack Found/Replacement and Repetitive Inspections

(h) If any crack is found during any inspection required by paragraph (f) or (g) of this AD: Do the actions in paragraphs (h)(1) and (h)(2) of this AD, except as provided by paragraph (i) of this AD, in accordance with Airbus Mandatory Service Bulletin A330–25–3227 or A340–25–4230, both Revision 01, both dated May 3, 2005, as applicable, until accomplishment of the replacement required by paragraph (j) of this AD.

(1) Before further flight: Replace the cracked bracket with a new, improved bracket having P/N F2511012920095, in accordance with Airbus Mandatory Service Bulletin A330–25–3227 or A340–25–4230, both Revision 01, both dated May 3, 2005, as applicable.

(2) Repeat the inspection of the replaced bracket as required by paragraph (f) of this AD, at the time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD. Then, do repetitive inspections or replace the bracket as specified in paragraph (g) or (h) of this AD, as applicable.

(i) For Model A330 series airplanes: Within 16,500 flight cycles after replacing the bracket.

(ii) For Model A340–200 and –300 series airplanes: Within 9,700 flight cycles after replacing the bracket.

(i) If both flanges of a bracket are found broken during any inspection required by this AD: Before further flight, replace the bracket as specified in paragraph (h) of this AD and perform any applicable related investigative and corrective actions (which may include inspections for damage to surrounding structure caused by the broken bracket, and corrective actions for any damage that is found), in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Replacement of Brackets/Investigative and Corrective Actions

(j) *Except as required by paragraph (h)(1) of this AD:* Within 72 months after February 8, 2007 (the effective date of AD 2006–26–12), replace existing brackets having P/N F2511012920000 or P/N F2511012920095 with titanium-reinforced brackets having P/N F2511305220096; and perform any related investigative and corrective actions (which may include detailed inspections for cracking of the bracket or damage to surrounding structure caused by a broken bracket, and applicable corrective actions for any damage that is found); in accordance with Airbus Service Bulletin A330–25–3249 or A340–25–4245, both dated May 3, 2005; or Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both Revision 01, both dated July 10, 2007; as applicable. After the effective date of this AD, use only Revision 01 of Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both dated July 10, 2007; as applicable. If any crack is found, before further flight, repair in accordance with Airbus Service Bulletin A330–25–3249 or A340–25–4245, both dated May 3, 2005; or Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both Revision 01, both dated July 10, 2007; as applicable. After the effective date of this AD, use only Revision 01 of Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both dated July 10, 2007; as applicable. Replacement of the affected bracket with a titanium-reinforced bracket having P/N F2511305220096 ends the repetitive inspections required by paragraph (g) or (h) of this AD. Although Airbus Service Bulletin A330–25–3249 and A340–25–4245, both dated May 3, 2005; and Airbus Mandatory Service Bulletin A330–25–3249 and A340–25–4245, both Revision 01, both dated July 10, 2007; specify to submit certain information to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

One-time Inspection

(k) For airplanes on which the actions required by paragraph (j) of this AD have been accomplished before the effective date of this AD: At the applicable time in paragraph (k)(1) or (k)(2) of this AD, remove the fasteners of the titanium-reinforced bracket and, if a fastener is broken, do a detailed inspection for cracking of the horizontal beam. Do all applicable corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both Revision 01, both dated July 10, 2007, as applicable. Where Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both Revision 01, both dated July 10, 2007, specifies to contact Airbus, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

(1) For Model A330 series airplanes: Prior to the accumulation of 16,500 total flight cycles, or within 20 months after the effective date of this AD, whichever occurs first.

(2) For Model A340–200 and –300 series airplanes: Prior to the accumulation of 12,400 total flight cycles, or within 20 months after the effective date of this AD, whichever occurs first.

Actions Accomplished According to Previous Issue of Service Bulletins

(l) This AD provides credit for actions performed in accordance with the service bulletins identified in paragraphs (1)(1) and (l)(2) of this AD.

(1) Accomplishing the actions specified in paragraphs (f), (g), and (h) of this AD before February 8, 2007, in accordance with Airbus Service Bulletin A330–25–3227 or A340–25–4230, both including Appendix 01, both dated June 17, 2004, as applicable, is acceptable for compliance with the requirements of those paragraphs.

(2) Accomplishing the actions specified in paragraphs (j) and (k) of this AD before the

effective date of this AD in accordance with Airbus Mandatory Service Bulletin A330–25–3249 or A340–25–4245, both dated May 3, 2005, as applicable, is acceptable for compliance with the requirements of those paragraphs.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, International Branch, ANM–116, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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) AMOCs approved previously in accordance with AD 2006–26–12 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(n) EASA airworthiness directives 2007–0281 and 2007–0282, both dated November 6, 2007, also address the subject of this AD.

Material Incorporated by Reference

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

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A330–25–3249	Revision 01	July 10, 2007.
Airbus Mandatory Service Bulletin A340–25–4245	Revision 01	July 10, 2007.
Airbus Service Bulletin A330–25–3227, excluding Appendix 01	Revision 01	May 3, 2005.
Airbus Service Bulletin A330–25–3249	Original	May 3, 2005.
Airbus Service Bulletin A340–25–4230, excluding Appendix 01	Revision 01	May 3, 2005.
Airbus Service Bulletin A340–25–4245	Original	May 3, 2005.

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

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A330–25–3249	Revision 01	July 10, 2007.
Airbus Mandatory Service Bulletin A340–25–4245	Revision 01	July 10, 2007.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 3 of this AD on February 8, 2007 (72 FR 256, January 4, 2007).

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Service Bulletin A330–25–3227, excluding Appendix 01	Revision 01	May 3, 2005.
Airbus Service Bulletin A330–25–3249	Original	May 3, 2005.
Airbus Service Bulletin A340–25–4230, excluding Appendix 01	Revision 01	May 3, 2005.
Airbus Service Bulletin A340–25–4245	Original	May 3, 2005.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, February 20, 2009.

Ali Bahrami

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–4649 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–0108; Airspace Docket No. 08–ASW–8]

RIN 2120–AA66

Change of Using Agency for Restricted Area 6320; Matagorda, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of R–6320, Matagorda, TX, from United States Customs Service'' to ''Continental North American

Aerospace Defense Command Region (CONR).'' The FAA is taking this action in response to a request from the United States Air Force (USAF), supported by United States Customs and Border Protection (legacy United States Customs Service), to reflect an administrative change of responsibility for the restricted area. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

DATES: *Effective Date:* 0901 UTC, May 7, 2009.

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

SUPPLEMENTARY INFORMATION:

History

On December 10, 2008, the USAF requested that the FAA change the using agency for R–6320 from, ''United States Customs Service'' to ''Continental North American Aerospace Defense Command Region (CONR).'' The USAF request was based on their interest in retaining the restricted area and expected funding in the future to purchase and house another aerostat system within that restricted airspace. United States Customs and Border Protection (legacy United States Customs Service) confirmed they have no interest in maintaining operational control over R–6320 and agreed to relinquish the using agency responsibility to CONR. Coordination with Houston Air Route Traffic Control Center was effected prior to this using agency change request being submitted by the USAF.

Section 73.63 of 14 CFR Part 73 was republished in FAA Order 7400.8R, dated February 5, 2009.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising the using agency listed for R–6320, Matagorda, TX; transferring using agency responsibility for R–6320 from ''United States Customs Service'' to ''Continental North American Aerospace Defense Command Region (CONR).'' This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

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

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.63 [Amended]

■ 2. § 73.63 is amended as follows:

* * * * *

R–6320 Matagorda, TX [Amended]

By removing the words ''Using agency. United States Customs Service'' and inserting the words ''Using agency. Continental North American Aerospace Defense Command Region (CONR).''

* * * * *

Issued in Washington, DC, March 2, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–4948 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–5180–F–05]

RIN 2502–AI61

Real Estate Settlement Procedures Act (RESPA): Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Further Deferred Applicability Date for the Revised Definition of ''Required Use'' and Solicitation of Public Comment on Withdrawal of Required Use Provision

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; request for comments.

SUMMARY: This final rule delays the effective date of the definition of *''required use''* as revised by HUD's November 17, 2008, final rule amending its RESPA regulations, until July 16, 2009. The November 17, 2008, final rule revised HUD's RESPA regulations to further the purposes of RESPA by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The final rule revised the existing definition of ''required use,'' which revision was directed to enhancing protections for consumers from certain practices conducted by affiliated business arrangements. The revised definition of ''required use'' would have become effective on January 16, 2009. However, on January 15, 2009, HUD published a final rule that delayed the effective date of the definition of *''required use''* from January 16, 2009, to April 16, 2009, due to litigation by the National Association of Home Builders, *et al.*, around the time of issuance of the final rule. For this same reason, HUD is further delaying the effective date of required use until July 16, 2009.

In this rule, HUD also solicits comment on withdrawing the revised definition of ''required use'' from the November 17, 2008, final rule. HUD will consider these comments before pursuing new rulemaking process on this definition. Since promulgating the rule on November 17, 2008, HUD has determined to reevaluate the scope and operation of the required use provision. New rulemaking would give HUD the opportunity to present for public consideration a new proposal based upon HUD's reevaluation of the required use provision to help ensure better consumer protections.

DATES: The amendment to § 3500.1 is effective March 10, 2009. The effective date of the definition of *''required use''* in § 3500.2, as revised by HUD's final rule published on November 17, 2008, at 73 FR 68204, and further delayed by final rule published on January 15, 2009, at 74 FR 2369, is further delayed to July 16, 2009.

Comment Due Date: April 9, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. 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 7th 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 *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 through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Director, or Barton Shapiro, Deputy Director, Office of RESPA and Interstate Land Sales, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9158, Washington, DC 20410–8000; telephone 202–708–0502 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On November 17, 2008 (73 FR 68204), HUD published a final rule amending its regulations to further the purposes of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617) by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The final rule followed publication of a March 14, 2008, proposed rule (73 FR 14030) and made changes in response to public comment and in further consideration of certain issues by HUD. Additional information regarding the regulatory amendments, and the changes made by HUD at the final rule stage, is provided in the preamble to the November 17, 2008, final rule.

The November 17, 2008, final rule became effective on January 16, 2009, but provided a longer transition period for the majority of the new requirements. Other provisions, however, were scheduled to take effect on January 16, 2009. Among regulatory changes identified as being applicable upon the effective date of January 16, 2009, is the revised definition of the term *''required use.''* The revision of that definition became the subject of litigation, following issuance of the final rule. (*National Association of Home Builders, et al.* v. *Steve Preston, et al.*, Civ. Action No. 08–CV–1324, United States District Court for the Eastern District of Virginia, Alexandria Division.)

For reasons related to the proper litigation of this case, HUD issued a final rule on January 15, 2009 (74 FR 2369) that deferred the effective date of the revised definition of *''required use''* for an additional 90 days until April 16, 2009. The litigation continues and HUD finds again that for reasons including the pending litigation, the applicability date of the definition of ''required use'' should be further delayed until July 16, 2009. The effective and implementation dates of the remaining provisions of the November 17, 2008, final rule are not affected by the action taken in this rule.

The further delay is consistent with the direction to federal agencies, provided in a January 21, 2009, memorandum from the Director of the Office of Management and Budget to consider extending the effective date for rules published under the prior Administration, which have not yet taken effect. Additionally, the memorandum notes that the Administrative Procedure Act provides for agencies to postpone the effective date of an agency action pending judicial review (see 5 U.S.C. 705). Accordingly, this further extension is consistent with law and the new Administration's procedural directions.

With the further delay of the effective date, HUD seeks to use this time to solicit public comment on withdrawing the ''required use'' definition, as promulgated in the November 17, 2008, final rule and commencing new rulemaking on this definition, which would similarly strive to ensure consumers are protected from certain practices conducted by affiliated business arrangements. Since issuance of the final rule, HUD has determined to reevaluate the scope and operation of the required use provision. This issue is one of importance in the RESPA context, and HUD, regulated industries, consumers and the public generally would be better served by new rulemaking. New rulemaking would offer HUD with the opportunity to present a new proposal based upon HUD's reevaluation of the required use provision. New rulemaking would provide consumers, industry, and other interested members of the public with the opportunity to comment on a definition of ''required use,'' developed as part of HUD's evaluation process, and for HUD to make informed decisions based on this new commentary. HUD therefore specifically seeks public comment on withdrawing the required use provision from the November 17, 2008, final rule and commencing new rulemaking on this subject.

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The Department finds that good cause exists to publish this final

rule for effect without first soliciting public comment as requiring public comment before extending the effective date would be contrary to the interest of justice and the public interest.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

■ Accordingly, 24 CFR part 3500 is corrected by making the following amendments:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

■ 1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq:* 42 U.S.C. 3535(d).

■ 2. Section 3500.1(b)(1) is revised to read as follows:

§ 3500.1 Designation and applicability.

* * * * *

(b) * * *

(1) The definition of *Required use* in § 3500.2 is applicable commencing on July 16, 2009; §§ 3500.8(b), 3500.17, 3500.21, 3500.22 and 3500.23, and Appendices E and MS–1 are applicable commencing January 16, 2009.

* * * * *

Dated: March 6, 2009.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–5221 Filed 3–9–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9444]

RIN 1545–BI42

Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9444) that were published in the **Federal Register** on Wednesday, February 11, 2009, under sections 367(a), 367(b) and 1248(a) of the Internal Revenue Code. The final regulations under section 367 revise existing final regulations and add cross-references. The final regulations under section 1248 update an effective/applicability date. The temporary regulations under section 367(a) and (b) revise existing final regulations concerning transfers of stock to a foreign corporation that are described in section 351 by reason of section 304(a)(1). The temporary regulations under section 1248(a) provide that, for purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation. The temporary regulations affect certain persons that transfer stock to a foreign corporation in a transaction described in section 304(a)(1), or certain persons that recognize gain under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock.

DATES: This correction is effective March 10, 2009, and is applicable on February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under sections 367 and 1248 of the Internal Revenue Code.

Need for Correction

As published Wednesday, February 11, 2009 (74 FR 6824), final and temporary regulations (TD 9444) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9444), which was the subject of FR Doc. E9–2835, is corrected as follows:

On page 6825, column 2, in the preamble, under the paragraph heading ''*A. Modified Application of Section 367(a) to Deemed Section 351 Exchanges*'', first paragraph of the column, fourth line from the bottom of the paragraph, the language ''recognized $100x gain under section'' is corrected to read ''recognize $100x gain under section''.

Guy Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9–4997 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9444]

RIN 1545–BI42

Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9444) that were published in the **Federal Register** on Wednesday, February 11, 2009, under sections 367(a), 367(b) and 1248(a) of the Internal Revenue Code. The final regulations under section 367 revise existing final regulations and add cross-references.

The final regulations under section 1248 update an effective/applicability date. The temporary regulations under section 367(a) and (b) revise existing final regulations concerning transfers of stock to a foreign corporation that are described in section 351 by reason of section 304(a)(1). The temporary regulations under section 1248(a) provide that, for purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation. The temporary regulations affect certain persons that transfer stock to a foreign corporation in a transaction described in section 304(a)(1), or certain persons that recognize gain under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock.

DATES: This correction is effective March 10, 2009, and is applicable on February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under sections 367 and 1248 of the Internal Revenue Code.

Need for Correction

As published Wednesday, February 11, 2009 (74 FR 6824), final and temporary regulations (TD 9444) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.367(a)–9T is amended by revising the paragraph of (b)(1) as follows:

§ 1.367(a)–9T Treatment of deemed section 351 exchanges pursuant to section 304(a)(1) (temporary).

* * * * *

(b) * * *

(1) The gain realized by the United States person with respect to the transferred stock in connection with the deemed section 351 exchange exceeds;

* * * * *

Guy Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9–4995 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9446]

RIN 1545–BG09

Gain Recognition Agreements With Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9446) that were published in the **Federal Register** on Wednesday, February 11, 2009 (74 FR 6952) under section 367(a) of the Internal Revenue Code concerning gain recognition agreements filed by United States persons with respect to transfers of stock or securities to foreign corporations.

DATES: This correction is effective March 10, 2009, and is applicable on February 11, 2009.

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 338 and 367 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9446) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.367(a)–8 is amended by revising paragraph (k)(3) to read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

* * * * *

(k) * * *

(3) * * * A disposition of the transferred stock or securities pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B)), or 721 applies, shall not constitute a triggering event if the U.S. transferor enters in to a new gain recognition agreement that provides that the dispositions described in paragraphs (k)(3)(i) and (ii) of this section shall constitute triggering events for purposes of the new gain recognition agreement.

* * * * *

Guy Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9–4998 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AN09

Delegations of Authority: Regulation Policy and Management

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations that delegate authority to manage, direct, and coordinate VA's rulemaking activities to certain officials. The amendments reflect the Secretary of Veterans Affairs' decisions to designate the General Counsel as the Department's Regulatory Policy Officer and to transfer the Office of Regulation Policy and Management to the Office of the General Counsel. These amendments are intended to provide VA with a single point of contact who can respond to the Secretary's rulemaking concerns.

DATES: *Effective Date:* March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Robert C. McFetridge, Director, Regulation Policy and Management (02REG), Office of the General Counsel, U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 461–4902. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of Regulation Policy and Management (ORPM) was established to provide centralized management and coordination for VA's decentralized rulemaking process. The head of ORPM was designated as the Assistant to the

Secretary for Regulation Policy and Management (ASRPM) and served as VA's Regulatory Policy Officer until the Deputy Secretary became VA's Regulatory Policy Officer in accordance with Executive Order 13422, which amended Executive Order 12866 (Regulatory Planning and Review) to require that position to be filled by a Presidential appointee. Subsequently, on June 10, 2008, the Secretary designated the General Counsel as the Department's Regulatory Policy Officer and transferred ORPM from the Office of the Secretary to the Office of the General Counsel (OGC). ORPM's name and mission remain the same, but that office is now in direct support of the General Counsel. The ASRPM has become OGC's Director for Regulation Policy and Management to assist the General Counsel in supervising VA's rulemaking process and VA's compliance with Executive Order 12866.

This document removes the Secretary's delegations of rulemaking authority to the ASRPM in 38 CFR 2.6(l) and adds provisions concerning rulemaking authority in the delegations of authority to the General Counsel in 38 CFR 2.6(e).

Administrative Procedure Act

This document pertains to agency organization and management. Accordingly, its publication as a final rule with no delay in its effective date is pursuant to 5 U.S.C. 553, which exempts such a document from the notice-and-comment and delayed-effective-date requirements of section 553.

Executive Order 12866

Because this document is limited to agency organization and management, it is not within the definition of ''regulation'' in section 3(d) of Executive Order 12866 and therefore not subject to that Executive Order's requirements for regulatory actions.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for this rule.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 2 as follows:

PART 2—DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

■ 2. Amend § 2.6 by:
■ a. Adding paragraph (e)(1).
■ b. Removing paragraph (l).
The addition reads as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(1) The General Counsel is delegated authority to serve as the Regulatory Policy Officer for the Department in accordance with Executive Order 12866. The General Counsel, Deputy General Counsel, and Director for Regulation Policy and Management are delegated authority to manage, direct, and coordinate the Department's rulemaking activities, including the revision and reorganization of regulations, and to perform all functions necessary or appropriate under Executive Order 12866 and other rulemaking requirements.

(Authority: 38 U.S.C. 501, 512)

* * * * *

[FR Doc. E9–5063 Filed 3–9–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0677; FRL–8770–1]

Approval and Promulgation of Implementation Plans; State of California; 2003 State Strategy and 2003 South Coast Plan for One-Hour Ozone and Nitrogen Dioxide

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve one state implementation plan (SIP) revision, and to approve in part and to disapprove in part a second SIP revision, submitted by the California Air Resources Board to provide for attainment of the one-hour ozone standard and maintenance of the nitrogen dioxide standard in the Los Angeles-South Coast Air Basin. The two SIP revisions include the 2003 State Strategy and the 2003 South Coast SIP, both of which were submitted on January 9, 2004.

With respect to the 2003 State Strategy, EPA is taking final action to approve the commitment by the State to develop and propose near-term defined measures sufficient to achieve specific emissions reductions in the South Coast and to continue implementation of an existing measure. With respect to the 2003 South Coast SIP, EPA is taking final action to approve certain elements, and to disapprove other elements. The plan elements that are being disapproved are not required under the Clean Air Act because they represent revisions to previously-approved SIP elements, and thus, the disapprovals will not affect the requirements for the State to have an approved SIP for these SIP elements. Therefore, the disapprovals do not trigger sanctions clocks nor EPA's obligation to promulgate a Federal implementation plan.

EPA is taking these actions under provisions of the Clean Air Act regarding EPA action on SIP submittals and plan requirements for nonattainment areas.

DATES: *Effective Date:* This rule is effective on April 9, 2009.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0677 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (520) 622–1622, *tax.wienke@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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IV. Statutory and Executive Order Reviews

I. Proposed Action

On October 24, 2008 (73 FR 63408), under the Clean Air Act (CAA or ''Act''), EPA proposed to approve one state implementation plan (SIP) revision, and to approve in part and to disapprove in part, a second SIP revision, submitted by the California Air Resources Board (ARB) to provide for attainment of the one-hour ozone national ambient air quality standard (NAAQS) and for maintenance of the nitrogen dioxide NAAQS in the Los Angeles-South Coast Air Basin Area (South Coast).[1] The two SIP revisions include the Final 2003 State and Federal Strategy (''2003 State Strategy'') and the 2003 revisions to the SIP for ozone and nitrogen dioxide in the South Coast Air Basin (''2003 South Coast SIP''),[2] both of which were submitted by ARB on January 9, 2004. These SIP revisions were developed in recognition of a need for additional emissions reductions to attain the one-hour ozone NAAQS than had been planned for in the late 1990s, and to establish new motor vehicle emissions budgets (MVEBs) for transportation conformity.

With respect to the 2003 State Strategy, we proposed to approve the commitments by ARB to develop and propose for adoption 15 near-term defined control measures, and the commitment by the California Bureau of Automotive Repair (BAR) to develop and propose one near-term defined control measure, sufficient to achieve specified emissions reductions in the South Coast. We also proposed to approve the continuation of the existing SIP pesticide strategy adopted by the California Department of Pesticide Regulation (DPR).

With respect to the 2003 South Coast SIP, we proposed to approve the base year and projected baseline emissions inventories, the South Coast Air Quality Management District's (District's or SCAQMD's) commitment to adopt and implement near-term stationary and mobile source control measures (with the exception of ''FSS–05—Mitigation Fee Program for Federal Sources'') and commitment to achieve aggregate emission reductions through a schedule of rule adoption and implementation, the District's contingency measure (''CTY–01—Accelerated Implementation of Control Measures''), the District's ''black box'' emission reduction commitment,[3] the vehicle emissions offset demonstration, and the nitrogen dioxide maintenance demonstration and related MVEBs.

Also, in connection with the 2003 South Coast SIP, we proposed to disapprove the District commitment to adopt one particular control measure (''FSS–05—Mitigation Fee Program for Federal Sources''); the ''black box'' emissions reduction assignment to EPA; the revised rate-of-progress (ROP) and attainment demonstrations; and the ozone MVEBs.

The primary rationale for proposing approval of certain control measures and the specific SIP elements described above is that they would strengthen the SIP by adding to, or updating, SIP elements previously approved by EPA. The reasons for proposing disapproval of the other specified elements of the 2003 South Coast SIP include incorrect ROP calculation methods and the withdrawal by ARB of the state emissions reductions commitments in the 2003 State Strategy that were relied upon in the 2003 South Coast SIP. In our proposed rule, we explained that no sanctions clocks or Federal implementation plan (FIP) requirement would be triggered by our disapprovals because the plan revisions that are the subject of the proposed disapprovals represent revisions to previously-approved SIP elements that EPA determined met the CAA requirements, and thus, the revisions are not required under the Act. For additional information, *please see* our October 24, 2008 proposed rule.

II. Public Comments

EPA's October 24, 2008 proposed rule provided a 30-day public comment period. We received comments dated November 17, 2008 from the Center on Race, Poverty & the Environment (CRP&E) on behalf of a number of environmental and community groups. CRP&E submitted additional comments by letter dated November 24, 2008. We also received comments from the Natural Resources Defense Council (NRDC) by letter dated November 24, 2008 that was followed shortly thereafter by a revised letter reflecting minor edits to the original letter. We summarize the comments and provide responses in the paragraphs below.

Comment: ARB's Executive Officer does not have the authority to withdraw certain portions of the 2003 State Strategy as it applies to the South Coast Air Basin and does not have the authority to withdraw the TCM portion of the 2003 South Coast AQMP. The withdrawal letter submitted by the Executive Officer cannot be approved by EPA because it was not subject to the notice and hearing requirements for SIPs under the CAA. Also, due to procedural deficiencies, EPA should not take into consideration the supplemental material submitted by the SCAQMD. EPA must act on the 2003 State Strategy and 2003 South Coast AQMP as submitted on January 9, 2004 and defer action on the subsequent withdrawals and supplemental material until such time as ARB completes the necessary public process.

Response: In our proposed rule, we describe in detail the letter from James Goldstene, ARB Executive Officer, dated February 13, 2008 (''February Goldstene Letter'') withdrawing several portions of the 2003 State Strategy that relate to the South Coast Air Basin. See 73 FR 63408, at 63410–63411. We also cite a second letter from the ARB Executive Officer, dated October 14, 2008 (''October Goldstene Letter''), that corrects an error in the February Goldstene Letter and

[1] The area referred to as ''Los Angles-South Coast Air Basin'' (South Coast Air Basin or ''South Coast'') includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. For a precise description of the boundaries of the Los Angeles-South Coast Air Basin, *see* 40 CFR 81.305.

[2] The ''2003 South Coast SIP'' refers to the January 9, 2004 submittal of the Final 2003 South Coast Air Quality Management Plan (AQMP) adopted by the SCAQMD on August 1, 2003, as modified by ARB through its resolution of adoption (Resolution 03–23) on October 23, 2003.

[3] ''Black box'' commitment refers to the provisions under CAA section 182(e)(5) that anticipate development of new control techniques or improvement of existing control technologies.

withdraws the TCM portion of the 2003 South Coast SIP. *Id.*

We acknowledge that our proposed action gives full effect to the two Goldstene letters cited above and thus we have proposed action only on those portions of the 2003 State Strategy and 2003 South Coast SIP that remain post-withdrawal. From the standpoint of CAA procedural requirements, we find nothing in the CAA that prevents states from withdrawing SIPs or SIP revisions prior to EPA approval. To be sure, such withdrawals may lead to sanctions under the CAA depending on the circumstances of the submittal, but the Act does not prevent states from subjecting themselves to potential liability for failure to submit SIPs and SIP revisions if they so choose. Moreover, no public process is required for withdrawal, once again, prior to the time EPA acts to approve the submittal as part of the applicable SIP.

Once SIPs or SIP revisions have been approved by EPA, however, then a state must submit a request for a withdrawal of, or rescission of, for example, a portion of a SIP, and EPA must approve the request to effectively amend the SIP. In other words, a state's post-approval rescission is considered a SIP revision, and subject to CAA public process procedural requirements, whereas a state's pre-approval rescission is not considered a SIP revision and takes effect upon receipt by EPA regardless of the procedure that was followed so long as the procedure for withdrawal is consistent with state law. In this instance, we had not approved the portions of the 2003 State Strategy and the 2003 South Coast SIP that the Goldstene letters purport to withdraw and thus we gave the letters full effect under the belief that the ARB Executive Officer had the authority under State law to make the subject withdrawals.

As to the challenge by the commenters to the authority of the ARB Executive Officer under State law to withdraw portions of the 2003 State Strategy and 2003 South Coast SIP, we take note of a letter dated March 26, 2008 from Mary D. Nichols, chairperson of the ARB (''Nichols Letter''), to various environmental organizations defending the Executive Officer's authority to make the withdrawals set forth in the February Goldstene Letter. In the Nichols Letter, the chairperson of the ARB explains: ''California Health & Safety Code §§ 39515 and 39516 empower the Executive Officer to act on behalf of the Board, and provide that any power that the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer, unless the Board specifically has reserved that power for the Board's own action. Withdrawal of still-pending SIP submittals is not among the powers the Board has reserved for itself.'' As to the specific Board language in the resolution of adoption for the 2003 South Coast SIP, the Nichols Letter explains: ''Moreover, the language of Resolution 03–23 * * * does not constitute such a reservation of powers. Resolution 03–23 directs the Executive Officer to take certain actions in 2003, which the Executive Officer did at that time. Resolution 03–23 does not prohibit the Executive Officer from taking different actions in 2008 when warranted by changed circumstances, which in this case is a logical administrative action to follow the Board's adoption of the new 2007 strategy.'' For the proposed rule, we reviewed the citations in the California Heath & Safety Code and the relevant provisions in ARB resolutions 03–22 and 03–23, adopting the 2003 State Strategy and 2003 South Coast SIP, respectively, and found the Nichols Letter to be a reasonable interpretation of California law. We continue to believe that the ARB Executive Officer acted in a manner consistent with State law in withdrawing the SIP submittal elements set forth in the February Goldstene Letter and that we took into account the subject withdrawals appropriately. The same holds true also for the withdrawal of the TCM element in the 2003 South Coast SIP in the October Goldstene Letter.

Lastly, a commenter challenges EPA's reliance on a September 10, 2008 letter from Elaine Chang, DrPH, Deputy Executive Officer, SCAQMD (''Chang Letter''), because it had not been subject to the public notice, hearing and adoption process required for SIP submittals. We describe the contents of the Chang Letter on page 63417 of the proposed rule as ''supplemental motor vehicle emissions data drawn largely from emissions inventory estimates presented in appendix III of the 2003 South Coast AQMP.'' We agree generally that amendments by a state to submitted SIPs (as opposed to withdrawals thereof) must undergo the necessary public process prior to submittal to meet CAA procedural requirements, but, in this instance, the supplemental information provided in the Chang Letter simply collects in a single table certain emissions data that had already been subject to the required public process and estimates certain other values through simple interpolation. Because we find that the underlying emissions data included in the Chang Letter were subject to the necessary public process, we continue to believe that reliance on the Chang Letter as support for the conclusion that the 2003 South Coast SIP meets the TCM offset requirement under CAA section 182(d)(1)(A) is appropriate.

Comment: EPA must ensure that the 2003 South Coast AQMP provides for attainment of the 1-hour ozone NAAQS and cannot simply rely on previous approvals because existing commitments to achieve certain emissions reductions have not come to fruition and because the new inventory shows that the plan does not provide sufficient emissions reductions to attain the standard by 2010. Furthermore, ambient data for year 2008 already shows that the South Coast will not attain the 1-hour ozone standard by 2010. EPA must ensure that there is a viable path to reaching the 1-hour ozone standard.

Response: We had a responsibility to ensure that the South Coast had a viable path to attainment for the 1-hour ozone NAAQS. In 1997 (62 FR 1150, January 9, 1997), and then again in 2000 (65 FR 18903, April 10, 2000), we fulfilled that responsibility through our final rulemaking actions approving South Coast attainment demonstrations for the 1-hour ozone NAAQS. Our final approvals of the attainment demonstrations for the South Coast were based on the best information available at the time.

As to unfulfilled commitments, we believe that a state is required to fulfill its commitments that have been approved into the SIP, but failure by a state to do so is a separate issue from our action on the 2003 State Strategy and 2003 South Coast SIP and does not trigger a requirement to prepare a new plan. Further, we note that, absent a commitment by a state such as a mid-course correction or an action by EPA such as a ''SIP call'' under CAA section 110(k)(5), a state is not required to submit a new attainment demonstration to account for changed circumstances, such as new technical information reflected in the emissions estimates in the 2003 South Coast SIP or the ambient ozone concentration data from 2008.[4]

[4] In support of the statement that the South Coast Air Basin will not attain the 1-hour ozone NAAQS by 2010, the commenter attached tables containing ARB summaries of preliminary 2008 ozone monitoring data from five sites in the South Coast: Asuza, Glendora-Laurel, Crestline, Santa Clarita, and Perris. The summary tables submitted by the commenter highlight exceedance-days relative to the more stringent state 1-hour ozone standard (0.09 ppm) rather than the federal 1-hour ozone standard (0.12 ppm). The data shows that the number of days during which hourly ozone concentrations equaled or exceeded 0.125 ppm (i.e., exceedance-days for the revoked federal 1-hour ozone standard) at the

Lastly, we agree that EPA must ensure a viable path to attainment, and previously did so for the 1-hour ozone NAAQS in the South Coast, but EPA's responsibility at the present time is to ensure that states adopt viable paths toward attainment of the 8-hour NAAQS, rather than the revoked 1-hour ozone NAAQS, and EPA will fulfill its obligations in this respect through review and action on submitted 8-hour ozone SIPs. For the South Coast, EPA is currently reviewing the 2007 South Coast AQMP to ensure that it meets all applicable requirements for demonstrating attainment of the 8-hour ozone NAAQS. By this, we do not mean to suggest that attainment of, or failure to attain, the revoked 1-hour ozone standard by the applicable attainment date is irrelevant. Indeed, failure to attain the 1-hour ozone standard, in this case, by 2010 (or 2011 or 2012 if the South Coast qualifies for an extension), can lead to regulatory consequences (such as the imposition of fees under CAA section 185 and the implementation of contingency measures) that are triggered to prevent backsliding during the transition from a 1-hour ozone standard to the 8-hour ozone standard.

Comment: EPA improperly fails to require a transportation control measure (TCM) plan pursuant to CAA section 182(d)(1)(A). Specifically, EPA has improperly construed section 182(d)(1)(A) not to require offsets for the emissions increases attributable to the increase in vehicle miles traveled (VMT) since 1990 despite clear guidance contained in a related House Committee report included in the legislative history of the Clean Air Act Amendments of 1990. Also, EPA has also failed to assess the adequacy of the 2003 South Coast AQMP's compliance with section 182(d)(1)(A) against the additional statutory requirement that the SIP provide adequate enforceable TCMs sufficient to allow total area emissions to comply with reasonable further progress (RFP) and attainment requirements.

Response: CAA section 182(d)(1)(A), referred to herein as the TCM provision, requires a state to submit a SIP revision, for certain nonattainment areas such as the South Coast, that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or numbers of vehicle trips in such areas and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements, to comply with ROP and attainment requirements. In our proposed rule, we indicate that ARB withdrew the TCM element of the 2003 South Coast SIP, and we conclude that compliance with the VMT offset requirement under CAA section 182(d)(1)(A) is shown in the 2003 South Coast SIP through supplemental material provided by SCAQMD showing a decline in motor vehicle emissions each year in the South Coast through the applicable attainment date (2010). *See* 73 FR 63408, at 63417 (October 24, 2008). EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (i.e., offsetting growth, attainment of the ROP reduction, and attainment of the ozone NAAQS) as separable,[5] and while not stated as such in the proposed rule, our proposed approval in this instance relates only to the first element of CAA section 182(d)(1)(A) (i.e., offsetting growth). The second and third elements of CAA section 182(d)(1)(A) were satisfied in 1997 when we approved the 1994 South Coast AQMP's transportation control strategies and TCMs, such as TCM–1 (''Transportation Improvements''), which includes the capital and non-capital facilities, projects, and programs contained in the Regional Mobility Element and programmed through the Regional Transportation Improvement Program (RTIP) process to reduce emissions, in the same action in which we approved the South Coast ROP and attainment demonstrations. See 62 FR 1150, at 1180–1181 (January 8, 1997).

As to EPA's interpretation of the first element of CAA section 182(d)(1)(A), we point to the following excerpt on this subject from our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble''):

> ''The EPA has received comment indicating that section 182(d)(1)(A) should be interpreted to require areas to offset any growth in VMT above 1990 levels, rather than offsetting VMT growth only when such growth leads to actual emissions increases. Under this approach, areas would have to offset VMT growth even while vehicle emissions are declining. Proponents of this interpretation cite language in the House Committee Report which appears to support the interpretation. The report states that '(t)he baseline for determining whether there has been growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area.' (H.R. No. 101–490, part 1, 101st Cong. 2nd Sess., at 242).
>
> Although the statutory language could be read to require offsetting of any VMT growth, EPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of 'any growth in emissions from growth in VMT.' It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area.
>
> While it is true that the language of the H.R. 101–490 appears to support the alternative interpretation of the statutory language, such an alternative interpretation would have drastic implications for many of the areas subject to this provision. Since VMT is growing at rates as high as 4 percent per year in some cities such as Los Angeles, these cities would have to impose draconian TCM's such as mandatory no-drive restrictions, to fully offset the effects of increasing VMT if the areas where [sic] forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls.
>
> Although the original authors of the provision and H.R. 101–490 may in fact have intended this result, EPA does not believe the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the CAAA that the words of this provision would impose such severe restrictions. There is no further legislative history on this aspect of the provision; it was not discussed at all by any member of the Congress during subsequent legislative debate and adoption.
>
> Given the susceptibility of the statutory language to these two alternative interpretations, EPA believes that it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such

five sites cited by the commenter are as follows: Asuza (3), Glendora-Laurel (10), Crestline (16), Santa Clarita (8), and Perris (2). These numbers reflect substantial improvement in air quality in the South Coast Air Basin since the area's classification as an ''extreme'' nonattainment area for ozone under the 1990 Clean Air Act Amendments when the corresponding number of exceedance-days (year 1990) at these sites were as follows: Asuza (84), Glendora-Laurel (103), Crestline (103), Santa Clarita (62), and Perris (62).

The total number of exceedance-days per monitor over the 2008–2010 time period will determine if the area attains by 2010. However, CAA section 181(a)(5) allows EPA to approve up to two one-year extensions of the attainment date if all requirements and commitments have been complied with and if no more than one exceedance of the standard occurs in the year preceding the extension year. We will not know whether the South Coast Air Basin qualifies for the first one-year extension until the end of 2010.

[5] We believe that the three elements of section 182(d)(1)(A) are separable because of the timing problem created by Congress in requiring a TCM SIP to be submitted years before the broader SIP submittals, such as the ROP and attainment demonstration SIPs. The SIP submittals showing attainment of the 1996 15 percent ROP and the post-1996 RFP and NAAQS attainment demonstration are broader in scope than growth in VMT or in numbers of vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment demonstrations, involve complex photochemical modeling studies. It was neither practicable nor reasonable to expect that the subsequently required submissions could be developed and implemented so far ahead of schedule as to effectively influence the TCM SIP submission.

interpretation, taking into consideration the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone standard, and in light of the absence of any discussion of this aspect of the VMT offset provision by the Congress as a whole (either in floor debate or in the Conference Report), EPA concludes that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.'' 57 FR 13498, at 13522–13523 (April 16, 1992).

For the reasons given in the General Preamble excerpt provided above, EPA believes that the first element of CAA section 182(d)(1)(A) requires states to adopt sufficient TCMs so that projected motor vehicle emissions, taking into account motor-vehicle-related emissions controls and growth in VMT, will never be higher during the ozone season in one year than during the ozone season in the year before, but that a state may comply with this provision through a demonstration of declining motor vehicle emissions each year through the attainment year rather than through submittal of TCMs.[6] Thus, we continue to accept the supplemental material submitted by letter dated September 10, 2008 from Elaine Chang, Deputy Executive Officer, SCAQMD, showing a decline in motor vehicle emissions each year in the South Coast through 2010, as a demonstration showing that the 2003 South Coast SIP meets the TCM offset requirement under CAA section 182(d)(1)(A).

Comment: Because conformity is still applicable under the 1-hour ozone standard and because the 8-hour ozone motor vehicle emissions budgets are less stringent than the 1-hour ozone budgets, EPA cannot allow the use of the former to serve as the conformity budgets for attainment of the 1-hour ozone standard.

Response: In our proposed rule, we proposed to disapprove the VOC and NO_X motor vehicle emissions budgets (MVEBs) for 1-hour ozone (''1-hour ozone MVEBs'') based on our proposed disapprovals of the one-hour ozone ROP and attainment demonstrations in the 2003 South Coast SIP. See 73 FR 63408, at 63418. We noted in our proposed rule that the 1-hour ozone MVEBs would not be used for conformity purposes even if we were to approve them because EPA has revoked the 1-hour ozone standard and transportation conformity determinations are no longer required for that air quality standard, and because we have already found 8-hour ozone MVEBs from the 2007 South Coast AQMP to be adequate for transportation conformity purposes. See 73 FR 63408, at 63418.

The commenter takes issue with our statement in the proposed rule that transportation conformity determinations are no longer required for the 1-hour ozone standard, citing the D.C. Circuit's decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006), and with our conclusion that the 1-hour ozone MVEBs would not be used for conformity even if we approved them.

We agree that the D.C. Circuit's decision in the *South Coast* overruled EPA's decision that 1-hour ozone MVEBs do not constitute one of the ''applicable requirements'' that must be retained for anti-backsliding purposes during the transition from the 1-hour to the 8-hour ozone standard, but the regulatory impact of the *South Coast* ruling is not what the commenter believes. On June 8, 2007, the D.C. Circuit amended its opinion to limit the scope of its decision regarding continued application of the 1-hour ozone conformity obligation to clarify that the court's reference to conformity determinations speaks only to the use of 1-hour ozone MVEBs as part of 8-hour ozone conformity determinations until 8-hour ozone MVEBs are found adequate or are approved. See EPA memorandum from Robert J. Meyers, Acting Assistant Administrator, to Regional Administrators, dated June 15, 2007. The court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes. Therefore, the court's decision does not change the transportation conformity regulations in place before the court's ruling on December 22, 2006.

In this instance, the relevant transportation conformity regulations are the amendments to the conformity regulations that EPA promulgated to address conformity in nonattainment and maintenance areas for the 8-hour ozone NAAQS. See 69 FR 40004 (July 1, 2004) and also 73 FR 4420, at 4434 (January 24, 2008). Under the 2004 amendments to the transportation conformity rule, 8-hour MVEBs replace the existing 1-hour ozone MVEBs once the 8-hour MVEBs are found adequate or are approved. See 40 CFR 93.109(e)(1) and (2). In this instance, we found certain 8-hour ozone MVEBs in the 2007 South Coast AQMP (specifically, ROP milestone years 2008, 2011, 2014, 2017, and 2020) to be adequate for transportation conformity purposes. See 73 FR 28110 (May 15, 2008), as corrected at 73 FR 34837 (June 18, 2008). As a result of our finding, the U.S. Department of Transportation and the area's Metropolitan Planning Organization, the Southern California Association of Governments, must use the 8-hour ozone MVEBs, and may not use the 1-hour ozone MVEBs, for transportation conformity determinations.

Lastly, the commenter juxtaposes the 8-hour ozone MVEBs, that have been found adequate, with the 1-hour ozone MVEBs that the 8-hour MVEBs replaced, to show that the 8-hour ozone MVEBs in 2011 are higher than the 1-hour ozone MVEBs, and concludes therefore the EPA cannot allow use of the former to serve as the MVEBs for attainment of the 1-hour ozone standard. However, as discussed above, conformity need no longer be shown for the 1-hour ozone NAAQS, and 1-hour ozone MVEBs no longer apply once a finding of adequacy is made for 8-hour ozone MVEBs, a circumstance that applies to the South Coast.

Comment: EPA should disapprove the Pesticide Strategy portion of the 2003 State Strategy because of a recent Ninth Circuit Court of Appeals decision that held that a particular document that had supported EPA's approval of the original Pesticide Strategy in the 1994 California Ozone SIP was not a part of the California SIP and thus was unenforceable under provisions of the Clean Air Act.

Response: One of the State's original purposes in adopting the 2003 State Strategy was to entirely replace the existing State control strategy for the South Coast (primarily comprised by commitments from the approved 1994 Ozone SIP) with a new strategy that included three components: an annual adoption schedule for aggregate emissions reductions, defined measures, and a set of long-term commitments including aggregate long-term emissions reductions. See section I, chapter D, of the 2003 State Strategy. In this context, the State included PEST–1 (''Implement Existing Pesticide Strategy''), which simply retains the existing SIP commitment, into the list of defined measures for the sake of completeness to allow for the wholesale replacement of the existing strategy for the South Coast with the new strategy from the 2003 State Strategy.

As described in the proposed rule (73 FR 63408, at 63410–63411), however, the State withdrew several components of the new State Strategy as it relates to the South Coast, including the aggregate annual emissions reductions commitments and long-term

[6] EPA has previously discussed its interpretation of the section 182(d)(1)(A) requirement in our approval of the VMT offset plan for the Houston/Galveston ozone nonattainment area. *See* 66 FR 57247 (November 14, 2001).

commitments, leaving just the bare commitment to bring certain measures (listed in table 1 of our October 24, 2008 proposed rule) to the ARB's Board for any action within the Board's discretion and to implement the existing Pesticide Strategy. The withdrawal of key components of the new State Strategy eliminated any possibility for the wholesale replacement of the existing State strategy for the South Coast with the new strategy.

Given the changed circumstances, PEST–1 did not need any longer to be brought forward as part of the 2003 State Strategy, but because ARB did not specifically withdraw it, EPA had to propose action on it. We did so through a proposed approval. A footnote to table 1 (of the proposed rule) sets forth our interpretation of what approval of PEST–1 would mean: ''We interpret our approval of this measure as maintaining the status quo with respect to the existing pesticide strategy (i.e., the SIP will continue to reflect the strategy as approved by EPA in 1997).'' Furthermore, since disapproval of PEST–1 in the 2003 State Strategy would not act to rescind the existing Pesticide Strategy, approval or disapproval of PEST–1 amounts to the same thing: namely, the continuation of the existing EPA-approved Pesticide Strategy. Therefore, deficiencies in the enforceability of the Pesticide Element, whatever they might be, are the same whether EPA approves PEST–1 or disapproves PEST–1.

Comment: EPA should disapprove the State's commitments to adopt new measures because they are unenforceable.

Response: With the withdrawal of key components of the 2003 State Strategy, including the aggregate annual and long-term emissions reductions commitments for the South Coast, the State has left only the bare commitment to bring certain near-term measures (listed in table 1 of our October 24, 2008 proposed rule) to the ARB's Board (for any action within the Board's discretion) and to implement the existing Pesticide Strategy. We acknowledge the limited scope of the State's commitment, but do not find it to be entirely unenforceable. For instance, ARB staff must bring to the Board the measures listed in table 1 of the proposed rule (drawn from the 2003 State Strategy) consistent with the schedule set forth in table 1. Further, the ARB staff proposal for each measure must, at a minimum, achieve the lower end of a range of reductions. Failure by ARB to act accordingly is subject to enforcement under applicable provisions of the Act once EPA approves the commitment into the California SIP. We concluded in our proposed approval that the California SIP would be more effective with the commitment than without the commitment. We explained our rationale for proposing approval of the State defined measures as follows: ''Assuming that the remaining component of the 2003 State Strategy adds to, but does not replace, the existing SIP ozone strategy, we propose to approve the State commitments with respect to the near-term defined measures listed in table 1 as described above as strengthening the SIP.'' See 73 FR 63408, at 63414. On this limited basis, we take final action today to approve the State's near-term defined measures from the 2003 State Strategy as part of the California SIP.

III. EPA Action

Under section 110(k)(3) of the CAA, and for the reasons discussed above and in the proposed rule, EPA is taking the following actions on the 2003 State Strategy, as submitted on January 9, 2004:

(1) Approval of commitments by State agencies to develop and propose 16 near-term defined control measures (15 for ARB and 1 for BAR) to achieve specified emissions reductions in the South Coast as listed in table 1 of the proposed rule and the continuation of the existing pesticide strategy.

Also under section 110(k)(3) of the CAA, and for the reasons discussed above and in the proposed rule, EPA is taking the following actions on the 2003 South Coast SIP, as submitted on January 9, 2004:

(1) Approval of base year and projected baseline emission inventories under CAA sections 172(c)(3) and 182(a)(1);

(2) Approval of the District's commitment to adopt and implement near-term control measures as shown in table 2 of the proposed rule (except FSS–05), the District's commitment to achieve emissions reduction through a schedule of adoption and implementation as shown in table 3 of the proposed rule, and the District's contingency measure CTY–01 (''Accelerated Implementation of Control Measures''), as strengthening the SIP;

(3) Disapproval of District control measure FSS–05 (''Mitigation Fee Program for Federal Sources'') that assigns control measure responsibility to the Federal Government;

(4) Approval of District's ''black box'' VOC emission reduction commitment of 31 tpd;

(5) Disapproval of the ''black box'' emission reduction commitment of 68 tpd of NO_X and 18 tpd of VOC assigned to the Federal Government;

(6) Disapproval of the attainment demonstration because control measures upon which the demonstration relies have been withdrawn;

(7) Disapproval of the ROP demonstrations because the calculations do not properly account for the emissions reductions from the pre-1990 Federal Motor Vehicle Control Program (FMVCP) and certain federal gasoline volatility requirements;

(8) Approval of the demonstration that no TCM offsets are required under CAA section 182(d)(1)(A) based on baseline motor vehicle emissions projections as supplemented by the District;

(9) Approval of the revised nitrogen dioxide maintenance demonstration based on the downward trend in baseline NO_X emissions;

(10) Disapproval of the 1-hour ozone (VOC and NO_X) motor vehicle emissions budgets in the wake of proposed disapprovals of the ROP and attainment demonstrations; and

(11) Approval of the nitrogen dioxide motor vehicle emissions budget of 686 tpd (year 2003), winter planning inventory.

No sanctions clocks or FIP requirement are triggered by our disapprovals because the approved SIP already contains the plan elements that we are disapproving. A disapproval of the revisions to the already-approved elements does not alter the fact that the SIP already meets these statutory requirements.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 11, 2009.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 15, 2009.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by revising paragraph (c)(339) introductory text and by adding paragraph (c)(339)(ii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(339) New and amended plans were submitted on January 9, 2004, by the Governor's designee.

* * * * *

(ii) Additional material.

(A) The following portions of the Final 2003 State and Federal Strategy (2003 State Strategy) for the California State Implementation Plan, adopted by the California Air Resources Board (ARB) on October 23, 2003:

(*1*) State agency commitments with respect to the following near-term defined measures for the South Coast Air Basin: LT/MED–DUTY–1 [Air Resources Board (ARB)], LT/MED–DUTY–2 (Bureau of Automotive Repair), ON–RD HVY–DUTY–1 (ARB), ON–RD HVY–DUTY–3 (ARB), OFF–RD CI–1 (ARB), OFF–RD LSI–1 (ARB), OFF–RD LSI–2 (ARB), SMALL OFF–RD–1 (ARB), SMALL OFF–RD–2 (ARB), MARINE–1 (ARB), MARINE–2 (ARB), FUEL–2 (ARB), CONS–1 (ARB), CONS–2 (ARB), FVR–1 (ARB), FVR–2 (ARB), and PEST–1 (Department of Pesticide Regulation) in Resolution 03–22 Attachments A–2, A–3, A–4 and A–6 Table I–7 and in 2003 State Strategy Section I Appendix I–1 and Sections II and III.

(B) The following portions of the South Coast 2003 Air Quality Management Plan (AQMP), adopted by the South Coast Air Quality Management District (SCAQMD) on August 1, 2003 and adopted by the California Air Resources Board on October 23, 2003:

(*1*) Base year and future year baseline planning inventories (summer and winter) in AQMP Chapter III and Appendix III; SCAQMD commitment to adopt and implement control measures CTS–07, CTS–10, FUG–05, MSC–01, MSC–03, PRC–07, WST–01, WST–02, FSS–04, FLX–01, CMB–10, MSC–05, MSC–07, MSC–08, FSS–06, and FSS–07 in AQMP Chapter 4, Table 4–1, as qualified and explained in AQMP, Chapter 4, pages 4–59 through 4–61 and in Appendix IV–A Section 1, and SCAQMD commitments to achieve near-term and long-term emissions reductions through rule adoption and implementation in AQMP Chapter 4, Tables 4–8A and 4–8B; contingency measure CTY–01 in AQMP Chapter 9, Table 2 and in Appendix IV–A Section 2 (excluding FSS–05); nitrogen dioxide maintenance demonstration in AQMP Chapter 6 page 6–11; and motor vehicle emissions budget for nitrogen dioxide in year 2003 of 686 tons per day (winter planning inventory) in AQMP Chapter 6 Table 6–7.

(*2*) Letter from Elaine Chang, Deputy Executive Officer, South Coast Air Quality Management District, dated September 10, 2008, containing supplemental material related to on-road motor vehicles emissions.

* * * * *

[FR Doc. E9–4593 Filed 3–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0131; FRL–8779–6]

RIN 2060–AM46

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is taking final action to grant a specific exemption from requirements to petition the Agency in order to import used ozone-depleting substances. The exemption would apply to entities that import spherical pressure vessels containing halon 1301 for aircraft fire extinguishing (''aircraft halon bottles'') for purposes of hydrostatic testing. This final rule reduces the administrative burden on entities that are importing aircraft halon bottles for the purpose of maintaining these bottles to meet commercial safety specifications and standards set forth in airworthiness directives of the Federal Aviation Administration. This action does not exempt entities that import bulk quantities of halon-1301 in containers that are being imported for other purposes.

DATES: This final rule is effective on April 9, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0131. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *phone number:* (202) 343–9749; *fax number:* (202) 343–2362; *e-mail address: maranion.bella@epa.gov.*

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I. General Information

A. Regulated Entities

The aircraft halon bottle exemption will affect the following categories:

Category	NAICS code	Examples of regulated entities
Hydrostatic testing laboratories or services	541380	Halon aircraft bottle testing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA believes could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Halons

This final action relates to the importation of halons. Halons are gaseous or easily vaporized halocarbons used primarily for extinguishing fires, and for explosion protection. The two halons most widely used in the United States are halon-1211 and halon-1301. This final rule is not expected to affect the supply of unblended halons.

Halons are used in a wide range of fire protection applications because they combine four characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires (referred to as Class A, B, and C fires, respectively). Second, they dissipate rapidly, leaving no residue, and thereby avoid secondary damage to the property they are protecting. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment where they can penetrate to and around physical objects to extinguish fires in otherwise inaccessible areas. Finally, halons are generally safe for limited human exposure when used with proper exposure controls.

While effective fire suppression agents, halons are among the most potent ozone-depleting substances (ODS). Halon-1301 has an ODP of 10.0 relative to CFC–11, and an atmospheric lifetime of 65 years. Halon-1211 has an estimated ODP of 3.0 relative to CFC–11, and an atmospheric lifetime of 16 years.

C. Stratospheric Ozone Protection and Legal Authority

The stratospheric ozone layer protects life on Earth from harmful ultraviolet (UV–B) radiation. Excessive UV–B exposure increases risk of skin cancer, cataracts, and suppressed immune function, as well as damage to plant life and aquatic ecosystems (WMO, 2007).[1] Emissions of halogenated gases that contain chlorine and bromine, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), methyl bromide, and halons, destroy stratospheric ozone. Production and

[1] World Meteorological Organization, *Scientific Assessment of Ozone Depletion: 2006,* Global Ozone Research and Monitoring Project—Report No. 50, 572 pp., Geneva, Switzerland, 2007.

consumption of these chemicals is controlled globally under the *Montreal Protocol on Substances That Deplete the Ozone Layer* (the Montreal Protocol), and in the United States under the Clean Air Act (CAA) as amended.

The domestic regulatory requirements can be found at 40 CFR part 82. The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the CAAA of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has made amendments to the regulations since that time.

Section 604 of the CAAA of 1990 requires a production and consumption phaseout for all class I substances, including halons. Since January 1, 1994, in accordance with the Montreal Protocol and the accelerated phaseout provision of section 606 of the CAAA of 1990, U.S. production and importation of halon-1301 has been prohibited (40 CFR 82.4(c)(1), (d); 58 FR 65018). EPA's regulations allow for limited exceptions to the ban on import of phased-out class I controlled substances provided the substances are: (1) Previously used, recycled, or reclaimed and the importer files a petition and receives a non-objection notice from the Administrator (40 CFR 82.4(j)); (2) imported for essential or critical uses as authorized by the Protocol and the regulations; (3) a transhipment or a heel; or (4) transformed or destroyed (40 CFR 82.4(d)). This final rule amends the petition requirements for substances that are previously used, recycled, or reclaimed. The basis for treating these substances differently from new substances was established in previous rulemakings and is summarized under section I.D of this preamble.

Additional authority for the amendments in this final rule is found in section 608(a)(2) of the CAAA of 1990, which directs EPA to establish standards and requirements regarding use and disposal of class I and II substances other than refrigerants. The purpose of section 608(a) is to reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such substances. EPA previously issued a rule implementing this provision with respect to halon use generally (63 FR 11084 (March 5, 1998) codified at 40 CFR part 82, subpart H). In the instance of aircraft halon bottles, EPA believes that this final rule will create a further incentive for industry to minimize emissions of halons by exempting certain importers from the up-front petition process in order to facilitate proper maintenance of the bottles and thereby minimize the potential for fissures and leaking of ODS from these bottles.

D. Import Petitioning Process

Initially, EPA did not make a distinction between the import of new and used controlled substances. In 1992, Decision IV/24 taken by the Parties to the Montreal Protocol interpreted Article 2 of the treaty as allowing a country to import a used ODS beyond the phaseout date of that substance. The Parties took this decision to promote the use of banks of ODS and to smooth the transition to ozone-safe alternatives. Following Decision IV/24, EPA added a regulatory provision to allow for the import of previously used or recycled controlled substances without consumption allowances (December 10, 1993, 58 FR 65018). Prior to that time, all imports of controlled substances, whether new or used, could only occur if the importing entity held and expended sufficient consumption allowances from EPA for the transaction (July 30, 1992, 57 FR 33754).

The Agency found, however, that the December 1993 rule was too permissive and that containers of virgin ODS could be, and in fact were, easily imported as fraudulently labeled used material. Other countries also experienced a rise in the illegal shipment of fraudulently labeled ODS following the reclassification of used ODS in Decision IV/24. Therefore, in 1994, EPA proposed to revise its regulations and require all importers to petition the Agency prior to importing a used ODS (November 10, 1994, 59 FR 56275). This petition process would allow the Agency to verify that a shipment in fact contained a used controlled substance and thus reduce, although not eliminate, the potential for illegal trade. In addition, the Agency also proposed to amend the defined phrase ''used and recycled controlled substances'' to eliminate the words ''and recycled'' and include only the term ''used.'' In its description of the proposed changes to the definition of used controlled substances, the Agency further stated that: ''[i]n this manner, a controlled substance is defined as used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed'' (59 FR 56285). These proposed changes, with minor adjustments based on comments, were issued by the Agency and the petition process for the import of used ODS was by EPA (May 10, 1995, 60 FR 24970). A subsequent final rule also was issued by the Agency that established the requirements that are currently in effect for the import petition process (December 31, 2002, 67 FR 79861).

The import petition requirements for class I substances are specified at 40 CFR 82.13(g)(2). They state, in part, that 40 days prior to shipment from the foreign port of export, the importer must provide information to the Administrator including, but not limited to the following: name and quantity of controlled substance to be imported; name and address of the importer along with information for a contact person; name and address of source facility along with information for a contact person; detailed description of the previous use providing documents where possible; a list of the name, make and model of the equipment from which the ODS was recovered; name and address of exporter along with contact information; the U.S. port of entry and expected date of shipment; a description of the intended use of the controlled substance; and the name and address of the U.S. reclamation facility where applicable. EPA may issue an objection to the petition if the information submitted by the importer lacks or appears to lack any of the information required under 40 CFR 82.13(g)(2), among other reasons. As further explained in section II below, the Agency recognizes that review of this information prior to import is not necessary for halon-1301 contained in aircraft halon bottles destined for service and is therefore amending its regulations as described in section II of this preamble.

E. History of Rulemaking

On April 11, 2006, EPA issued a direct final rule (71 FR 18219) and companion proposed rule (71 FR 18259) in the **Federal Register**. The direct final rule sought to exempt importers of aircraft halon bottles, which contain halon-1301, from the import petition process in order to facilitate the routine hydrostatic testing of these bottles for environmental and safety purposes. EPA published the amendment without prior proposal because the Agency viewed it as a noncontroversial action and anticipated no adverse comment. The Agency did not anticipate any adverse comment because of the importance of

testing aircraft halon bottles for safety purposes and the environmental benefit resulting from preventative maintenance of these containers. In the direct final rule, the Agency indicated that should we receive adverse comment by May 11, 2006, we would publish a timely withdrawal notice in the **Federal Register**. During the comment period, EPA received comments from a total of four submitters. These comments are contained in Air Docket EPA–HQ–OAR–2005–0131. Comments from three of the four submitters supported EPA's action to exempt importers of aircraft halon bottles from the import petition process. However, EPA received adverse comments from one commenter and, therefore, withdrew the direct final rule on June 7, 2006 (71 FR 32840). The Agency is addressing these comments in today's final action in section III below.

II. Aircraft Halon Bottle Exemption From the Import Petitioning Process

A. Summary of Final Rule

In this action, EPA is amending its regulations to exempt the import of aircraft halon bottles for hydrostatic testing from the import petition process.

EPA classifies halon-1301 contained in aircraft halon bottles that were removed from an on-board fire suppression system as used controlled substances. EPA regulations define ''used controlled substances'' as ''controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)'' (40 CFR 82.3). Halon-1301 is placed into aircraft bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon-1301 contained in the bottles is considered used since it was removed from a use system.

In the history of the program, the mechanisms that govern the import of used ODS have ranged from no controls to a detailed up-front petition process. The Agency has selected implementation mechanisms considering many factors including practicability and protection of the ozone layer. When EPA believed it was to the benefit of the environment to encourage the import of used ODS, the Agency implemented a nonrestrictive import mechanism. When the Agency discovered a rise in illegal trade of ODS, EPA instituted a thorough petition process to curb the traffic of illicit material.

EPA does not believe that it is economically feasible to import halon-1301 illegally in aircraft bottles due to the size, costs, and uniqueness of the bottles. Thus, the illegal-trade basis for EPA's rigorous petition process does not apply in this instance. Furthermore, EPA believes that a narrow exemption for aircraft halon bottles is appropriate because it will remove impediments to the proper management of these halon-1301 containing bottles. In the United States and abroad, the exclusion of these aircraft bottles from the import petition process will cause transit and testing to occur more expeditiously, thus promoting proper maintenance of these fire suppression devices and prevention of accidental emissions. Proper maintenance of these bottles is crucial for safety and environmental protection.

B. Import of Aircraft Halon Bottles for Hydrostatic Testing

Halon-1301 is used in aircraft halon bottles that are components of larger fire suppression systems used on aircraft. Halon bottles are pressurized containers that typically contain from one to one hundred pounds of a halon-1301/nitrogen mixture. As halon bottles are under high pressure in severe environments, they are at risk of leakage and their effectiveness may decrease over time. Hydrostatic testing of the bottles detects such leakage and determines whether the bottles are functioning properly.

The halon bottles must be tested routinely under Federal Aviation Administration (FAA) and United States Department of Transportation (DOT) regulations. Federal Aviation Regulations (FAR) section 25.851 (a)(6) (14 CFR Part 25) requires the presence of halon bottles aboard transport category aircraft. The FAA Flight Standards Handbook Bulletin for Airworthiness 02–01B (effective 7/16/02 and amended 2/10/03) provides guidance on the maintenance and inspection of the halon bottles and states in paragraph 3(b) that ''pressure cylinders that are installed as aircraft equipment will be maintained and inspected in accordance with manufacturer's requirements.'' Manufacturer's requirements specify periodic testing of aircraft halon bottles.

Halon bottles may be serviced by an on-site facility at an airport or may be removed from the aircraft, shipped to a testing facility at a location in the U.S. or abroad, and then returned to the airline. Once a hydrostatic testing company receives the halon bottles, the used halon-1301 is removed and recovered for future reclamation. The bottles are then hydrostatically tested to ensure durability and effectiveness, after which they are re-filled with halon-1301 and returned to the customer.

To better understand this process, EPA received information from two major service companies and about 15 other companies that provide hydrostatic testing services to the airline industry. Industry experts estimate that approximately 60,000 bottles are in service globally, some portion of which are serviced in U.S. testing facilities. Information provided to the Agency from the two major U.S. companies indicates that each year those companies service about 5,000 bottles, some portion of which are imported. The amount of halon in the aircraft bottles can range from 1 to 100 pounds of halon-1301, although most bottles contain between 5 to 25 pounds. EPA understands that not all aircraft bottles are imported with complete charges, meaning that a bottle capable of holding 25 pounds of halon-1301 may in fact contain less. It is industry practice, however, to export the bottles back to the country of origin with a full charge of halon-1301.

C. Exemption to the Import Petition Requirements

This final rule exempts importers of halon-1301 shipped in aircraft halon bottles from the petition import requirements under 40 CFR 82.13(g)(2), as described in the previous section of this preamble. An importer or exporter of halon-1301 contained in aircraft halon bottles is typically a maintenance and testing facility that is a certified repair station under 14 CFR part 145 or an aircraft halon bottle manufacturer that imports and exports aircraft fire extinguishing pressure vessels for servicing, maintenance, and hydrostatic testing. Under this final rule, importers of aircraft halon bottles are no longer required to submit petition data to, and seek approval from, the Administrator prior to individual imports.

D. Reporting and Recordkeeping Requirements for Importers and Exporters

The Agency tracks the amount of used halon-1301 imported and exported annually in aircraft bottles because such movement of halon across U.S. borders constitutes import and export as characterized under 40 CFR part 82. EPA reminds importers of aircraft bottles that despite the exception to the petition requirements finalized in this action, they are still required to maintain import records, as set forth in 40 CFR 82.13(g)(1), including but not limited to the following: (i) The quantity of each controlled substance imported, either alone or in mixtures, including

the percentage of each mixture which consists of a controlled substance; (ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed); (iv) The date on which the controlled substances were imported; (v) The port of entry through which the controlled substances passed; (vi) The country from which the imported controlled substances were imported; (vii) The commodity code for the controlled substances shipped, which must be one of those listed in Appendix K to 40 CFR part 82, subpart A; (viii) The importer number for the shipment; (ix) A copy of the bill of lading for the import; (x) The invoice for the import; (xi) The quantity of imports of used, recycled or reclaimed class I controlled substances; and (xii) The U.S. Customs entry form.

EPA is amending the recordkeeping requirement at 40 CFR 82.13(g)(1) to state that information provided through the petition process is only to be maintained ''where applicable.'' No such information will have been provided in the case of aircraft halon bottles. EPA is not amending the remaining reporting and recordkeeping requirements for importers and exporters, found at 40 CFR 82.13(g)(4) and (h)(1) respectively, but is summarizing the requirements relevant to importers and exporters of halon aircraft bottles in this preamble for convenience of the public. Persons who import or export halon aircraft bottles should refer to the regulations for the definitive list of requirements.

EPA reminds importers of aircraft halon bottles that they are required to submit quarterly reports within 45 days of the end of the applicable quarter, in accordance with 40 CFR 82.13(g)(4). These quarterly reports include but are not limited to the following information: (i) A summary of the records required in paragraphs 40 CFR 82(g)(1)(i) through (xvi) for the previous quarter; (ii) the total quantity imported in kilograms of each controlled substance for that quarter; and (iii) the quantity of those controlled substances imported that are used controlled substances. EPA reminds persons that test and subsequently export aircraft halon bottles that they must submit an annual report (45 days after the end of the calendar year, in accordance with 40 CFR 82.13(h)). The annual report must include but is not limited to the following information: (i) The names and addresses of the exporter and the recipient of the exports; (ii) The exporter's Employee Identification Number; (iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed; (iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories; (v) The country to which the controlled substances were exported; (vi) The amount exported to each Article 5 country; (vii) The commodity code of the controlled substance shipped.

EPA has provided guidance on the reporting and recordkeeping requirements. The importer quarterly report form and the annual exporter report form may be found on EPA's Web site at *http://www.epa.gov/ozone/record*. This information is also available via the Ozone Hotline at (800) 296–1996.

III. Response to Comments

A commenter on the April 11, 2006, rule (71 FR 18259) opposes any use of halons and opposes reducing the burden for those who import halons. EPA does not agree with the commenter's concerns regarding the potential adverse health effects of direct exposure to halons, or using this as a basis for opposing the exemption to the import petition process for importers of aircraft halon bottles. Halons are gaseous or easily vaporized halocarbons that were developed for, and have been used in, a wide range of fire protection applications because they combine four important characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires. Second, they dissipate rapidly, leaving no residue. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment. Finally, halons are generally safe for limited human exposure when used with proper exposure controls. This action is not expected to affect the supply or the continued use of halons for these applications. It concerns the import of used halons and does not allow the production of additional quantities of halons.

With regard to the commenter's opposition to reducing the recordkeeping and reporting requirements for importers of aircraft halon bottles, EPA believes that this action will create a further incentive for industry to minimize emissions of halons while facilitating the proper maintenance of the bottles and thereby minimizing inadvertent leaks. Proper maintenance of these bottles is crucial from a safety perspective in order to prevent leakage and meet bottle testing requirements under FAA and DOT regulations. Because halons are among the most potent ozone-depleting substances in use today, minimizing emissions is also important for the environment. As discussed in section II.D. above, despite the exception to the petition requirements finalized in this action, importers of aircraft halon bottles remain subject to recordkeeping and reporting requirements.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Current recordkeeping and reporting requirements under 40 CFR 82.13 allow EPA to implement the provisions of this final rule. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in the hydrostatic testing of aircraft halon bottles as defined in NAICS code 541380 with annual receipts less than $10,000,000 (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined in NAICS code 541380. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. EPA has thus determined that this final rule will relieve burden on all entities that import aircraft halon bottles.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Rather, this action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles.

E. Executive Order 13132: Federalism

Executive Order 13132, titled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule is expected to primarily affect importers and exporters of halons. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Rather, this action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. EPA nonetheless has reason to believe that the environmental, health, or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK. ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma,'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, BK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Any impact this action does have will be to further decrease impacts on children's health from stratospheric ozone depletion.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Thus, this rule is not expected to increase the impacts on the health of minority or low-income populations from stratospheric ozone depletion.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 9, 2009.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Exports, Halon, Imports, Ozone layer, Reporting and recordkeeping requirements.

Date: March 4, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.3 is amended by adding, in alphabetical order, definitions for ''Aircraft halon bottle'' and ''Hydrostatic testing'' to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Aircraft halon bottle means a vessel used as a component of an aircraft fire suppression system containing halon-1301 approved under FAA rules for installation in a certificated aircraft.

* * * * *

Hydrostatic testing means checking a gas pressure vessel for leaks or flaws. The vessel is filled with a nearly incompressible liquid—usually water or oil—and examined for leaks or permanent changes in shape.

* * * * *

■ 3. Section 82.4 is amended by revising the first sentence of paragraph (j) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3).

* * * * *

■ 4. Section 82.13 is amended by revising paragraphs (g)(1)(ii) and (g)(2) introductory text to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(g) * * *

(1) * * *

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and, where applicable, the information provided with the petition as under paragraph (g)(2) of this section;

* * * * *

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

* * * * *

[FR Doc. E9–5073 Filed 3–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–523; MB Docket No. 08–125; RM–11457]

Television Broadcasting Services; Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Local TV Pennsylvania License, LLC, the licensee of station WNEP–DT, to substitute DTV channel 50 for post-transition DTV channel 49 at Scranton, Pennsylvania.

DATES: This rule is effective March 10, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–125, adopted February 26, 2009, and released February 27, 2009. 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 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 [Amended]

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

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–5059 Filed 3–9–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 071003556–81194–02]

RIN 0648–AW08

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP) which was approved by NMFS on June 18, 2008. Amendment 15 revised the FMP to include provisions for a vessel license limitation program for the non-tribal sectors of the Pacific whiting fishery. Amendment 15 is intended to serve as an interim measure to limit potential participation in the Pacific whiting fishery within the U.S. West Coast Exclusive Economic Zone until implementation of a trawl rationalization program under Amendment 20 to the Groundfish FMP.

DATES: Effective April 9, 2009.

ADDRESSES: Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: *http://www.pcouncil.org/groundfish/gffmp.html*.

Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 0070, or by e-mail to *DavidRostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206–526–6110, fax: 206–526–6736, or e-mail: *becky.renko@noaa.gov*, or for permitting information, Kevin Ford, phone: 206–526–6115, fax: 206–526–6736, or e-mail: *kevin.ford@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm*.

Background

Amendment 15 to the FMP created a vessel license limitation program for the three non-tribal sectors of the Pacific whiting fishery off the U.S. West Coast. Under current Federal regulations, catcher vessels in the Pacific whiting shoreside fishery, catcher vessels in the mothership fishery, and catcher/processor vessels, must be registered to a groundfish limited entry permit that has a trawl gear endorsement. Mothership vessels are not required to be registered to a groundfish limited entry permit because the process only and do not harvest. The limited entry program has been in place since 1994 and allows appropriately registered vessels to participate in groundfish fisheries targeting any of the 90+ species managed under the Pacific Coast Groundfish FMP. This action implements Amendment 15 to the FMP by establishing regulations that require vessels to qualify for a Pacific whiting vessel license limitation program to harvest and/or process in the non-tribal Pacific whiting fishery. This is in addition to the requirement for harvesting vessels to be registered to a groundfish limited entry permits. Amendment 15 and the implementing regulations are intended to serve as an interim measure that will be discontinued when the Pacific Fishery Management Council adopts and the National Marine Fisheries Service implements a trawl rationalization program under Amendment 20 to the Pacific Groundfish FMP. Amendment 20 is currently under development by the Council, which adopted its preliminary preferred alternative at the June 2008 Council meeting. The Council anticipates taking final action on the trawl rationalization program in November 2008. If NMFS approves Amendment 20, implementation is scheduled for late 2010, at which time the regulations implementing Amendment 15 would be replaced by those implementing Amendment 20. If development and implementation of Amendment 20 is delayed beyond that point, NMFS intends to request that the Council reconsider the provisions of Amendment 15.

NMFS published a Notice of Availability for Amendment 15 on March 19, 2008 (73 FR 14765), and requested public comment on it through May 19, 2008. No public comments were received on the amendment.

Amendment 15 was approved by NMFS on June 18, 2008. NMFS published a proposed rule on July 11, 2008 (73 FR 39930), which requested comments through August 11, 2008. During the proposed rule comment period, NMFS received 1 letter from another Federal agency in support of the rulemaking, and 2 letters from members of the industry. The letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 15 also appears in the Environmental Assessment for this action, available via the NMFS website provided above under ''Electronic Access.''

Comments and Responses

NMFS received 2 letters of comment from members of the fishing industry on the proposed rule to implement Amendment 15. These comments are addressed here:

Comment 1: Both commentors recommended implementation of the preferred alternative. One commentor believes that implementation of Amendment 15 is necessary to reduce the conservation risks to overfished stocks and ESA-listed species.

Response: NMFS agrees with the commentors.

Comment 2: One commentor requested clarification that the $650 licensing application fee is a one-time expense and that there will be no annual renewal fee.

Response: The fee to process a Pacific Whiting Vessel License will be approximately $650 and is a one-time fee. The regulation has been modified to reflect this. The owner of a vessel registered to a Pacific Whiting Vessel License will not be required to renew it on an annual basis.

Comment 3: One commentor identified an error in the regulatory text at 660.336 (a)(1) that would have required mothership processors to hold limited entry permits.

Response: Owners of harvesting vessels are currently required to hold a limited entry permit, registered for use with that vessel, with a trawl gear endorsement. Mothership vessels process, but do not harvest and are currently not required to hold a limited entry permit. This action does not change the existing requirements for groundfish limited entry permits, but does implement new requirements for a Pacific whiting vessel license for all vessels. The error has been corrected.

Comment 4: One commentor requested that clarification be provided for the 2008 fishery qualifying criteria defined in regulation at 660.336 (a)(2)(i).

Response: At this time, qualifying criteria specified for the 2008 fishery is being removed from the regulatory text because the 2008 Pacific whiting fishery is expected to be completed or near completion when this final rule becomes effective. The application deadline announced in the final rule is April 9, 2009.

Comment 5: One commentor requested that NMFS make the following two updates to the environmental assessment that supports this action: (1) revise the Pacific whiting biomass projections using the results of the 2008 stock assessment to more accurately state the status of the stock biomass; and, (2) revise the deadline dates specified for submission of the Pacific whiting vessel license application to match the proposed rulemaking.

Response: In approving this rule, NMFS has considered the recent stock assessment information, but did not revise the EA which was finalized on June 18, 2008, following a 60 day period in which the EA was available to the public for comment. The stock assessment information considered is consistent with the Finding of No Significant Action prepared in June. The Pacific whiting vessel license application deadline that applies to fishery participants will be established in regulation by this action. Given delays in the effective date of this final rule the application deadline is being further revised to April 9, 2009.

Comment 6: One commentor did not believe that the EA fully expressed the benefits to the Pacific whiting stock and communities from the implementation of a limited access program in the Pacific Whiting fishery.

Response: The EA for this action was finalized on June 18, 2008, following a 60 day period in which the EA was available to the public for comment. No comments were received on the EA during the comment period. NMFS believes that the EA adequately expressed effects of the alternative actions on the biological and socio-economic environments and that the recommended revisions would not change the proposed action or the Finding of No Significant Action.

Comment 7: One commentor believes it is premature to remove existing regulatory text at § 660.373 (h) that constrains vessel mobility between the catcher/processor and mothership fisheries in the same year. Mobility between sectors is currently under consideration with Amendment 20 for a trawl rationalization program.

Response: NMFS agrees with this comment. Because the issue of mobility is being considered under Amendment 20 and was not specifically addressed by the Council with Amendment 15, NMFS has modified the proposed language and is not removing regulatory text at § 660.373 (h) at this time.

Changes From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 660.336, (a)(1) has been revised to require mothership processors to hold only a Pacific whiting vessel license and not a limited entry permit.

2. In § 660.336 (a)(2)(i), vessel qualifying criteria for the 2008 fishery has been removed.

3. In § 660.306 (f), § 660.333 (a) and § 660.336(a), dates pertaining to application for Pacific whiting vessel licenses and effective dates for the license have been changed.

4. In § 660.339 paragraph (b) was added to clarify that there will be a one-time fee for the issuance of the original Pacific whiting vessel license.

5. In § 660.336 paragraph (a)(2)(i), NMFS has determined that the term ''decommissioned'' is too vague. The term has been replaced with the following: scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required.

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 15 to the FMP is necessary for the conservation and management of the Pacific whiting fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

This rule has been determined to be significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see ADDRESSES) and a summary follows here: Section 604 (a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) states that when an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as

described in section 603(a), the agency shall prepare an FRFA. Each FRFA shall contain: (1) a succinct statement of the need for, and objectives of, the rule; (2) a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

This action is necessary to satisfy the requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. In addition, this action will benefit fisheries conservation and management by reducing the race for fish by restricting entry into all sectors of the Pacific Whiting fishery.

Amendment 15 to the Pacific Coast Groundfish FMP is an interim step prior to the adoption of Amendment 20–Trawl rationalization for Pacific Groundfish which includes Pacific whiting which is scheduled to be completed in 2011 or as soon as possible thereafter. The objective of this rule is to prevent new entrants from entering the whiting fishery in order to provide conservation benefits. Current market conditions and the changing nature of Alaska fisheries are likely to bring new entrants to the fishery. Increased vessel participation in the whiting fishery will likely accelerate the race for fish, reduce the per vessel revenues of existing participants, may have undesirable consequences on overfished and protected species, and could result in a fishery that is more costly and difficult to manage in an effective manner.

NMFS received no comments on the IRFA. Other comments were received and are addressed above, including Comment 2, which clarifies the economic impacts of the rule. Specifically, the regulations would limit participation in the non-tribal Pacific Whiting fishery to those vessels that meet the qualification criteria discussed elsewhere in this rule. These vessels include catcher/processors, mothership processors, catcher vessels in the Pacific whiting shoreside fishery, and catcher vessels in the mothership fishery. The Small Business Administration (SBA) guidelines for fishing firms use a $4,000,000 gross revenue threshold to separate small from large operations. In the application to any one firm, the $4,000,000 threshold considers income to all affiliated operations. NMFS records suggest the gross annual revenue for each of the catcher/processor and mothership operations operating in the WOC exceeds $4,000,000 and they are therefore not considered small businesses. NMFS records also show that 10–43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Since 1994, 26–31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). This rulemaking is expected to have minimal impacts on the mothership and shoreside catcher vessels. It is also expected to have minimal impact on vessels in the catcher/processor and mothership processors. If anything, this rule maintains the economics of the existing small businesses participating in the fishery as it prevents new vessels, potentially the larger vessels from Alaska, from entering the fishery. To qualify for a license, entities need only provide a logbook report, an observer report, or a fish ticket or a mothership receipt that demonstrates that qualification criteria have been met. These documents should be fairly easy to submit as they should be within existing business files or be readily obtained by directly contacting NMFS or the appropriate state agencies. Given the ease of documentation, separate requirements based on size of business were not developed. As part of this rulemaking process, a small entity compliance guide (the guide) has been prepared. The guide and final rule will be sent to the address of record for all the known potential entities that are directly affected by this final rule.

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0583. The public reporting burden for preparing and submitting a Pacific whiting vessel license application is a one-time estimate expected to average 60 minutes per response. In subsequent years, approximately six respondents are expected to average 30 minutes per response to submit information on changes to the license records maintained by NMFS. The estimated time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202 395 7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, and Oregon coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central

Valley, south/central California, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000–fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Councl's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 27, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.306, paragraphs (f)(1) through (f)(6) are redesignated as paragraphs (f)(2)through (f)(7), respectively, and a new paragraph (f)(1) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f) * * *

(1) Fish in any of the sectors of the whiting fishery described at § 660.373(a) after April 9, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. April 9, 2009, vessels are prohibited from fishing, landing, or processing primary season Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). For the purpose of this paragraph, ''historic participation'' for a specific sector is the same as the qualifying criteria listed in § 660.336 (a)(2).

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

* * * * *

■ 3. In § 660.333, paragraph (f) is removed and paragraph (a) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

(a) General. A limited entry permit confers a conditional privilege of participating in the Pacific coast groundfish limited entry fishery, in accordance with Federal regulations in 50 CFR part 660. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that vessel for use with a limited entry permit. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). All limited entry permits have size endorsements and a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. After April 9, 2009, a catcher vessel participating in either the whiting shore-based or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After April 9, 2009, a vessel participating in the whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel

license under § 660.336. After April 9, 2009, although a mothership vessel participating in the whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336.

* * * * *

■ 4. In § 660.335, paragraph (f)(3) is removed and paragraph (a)(2) is revised to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

(a) * * *

(2) Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

* * * * *

■ 5. A new § 660.336 is added to read as follows:

§ 660.336 Pacific whiting vessel licenses.

(a) *Pacific whiting vessel license*—(1) *General.* After April 9, 2009, participation in the non-tribal primary whiting season described in § 660.373(b) requires:

(i) An owner of any vessel that catches Pacific whiting must hold a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to participate;

(ii) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to participate.

(iii) Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest whiting in the primary whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(2) *Pacific whiting vessel license qualifying criteria.*

(i) *Qualifying criteria.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(A) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(B) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(C) For catcher vessels delivering whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(D) For catcher vessels delivering whiting to Pacific whiting first receiver, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of whiting taken with mid-water trawl gear during a primary shore-based season during the period January 1, 1994, through January 1, 2007, and where the weight of whiting exceeded 50 percent of the total weight of the landing.

(ii) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(C) For participants in the at-sea whiting fisheries, documentation of participation could include, but is not limited to: a final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the whiting fishery in an applicable year and during the applicable primary season, a bill of lading for whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have participated in the whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(E) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) *Issuance process for Pacific whiting vessel licenses.*

(i) SFD will mail, to the most recent address provided to the SFD permits office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm.* A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until April 9, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after April 9, 2009.

(ii) After receipt of a complete application, NMFS will notify applicants by letter of its determination

whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After April 9, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register**.

(iii) If a vessel owner files an appeal from the determination under paragraph (a)(3)(ii) of this section the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after May 11, 2009.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

(b) [Reserved]

■ 6. Section 660.339 is revised to read as follows:

§ 660.339 Limited entry permit and Pacific whiting vessel license fees.

(a) The Regional Administrator will charge fees to cover administrative expenses related to issuance of limited entry permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

(b) The Regional Administrator will charge a one-time fee for the issuance of the original Pacific whiting vessel license.

■ 7. In § 660.373, paragraph (a) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

(a) *Sectors and licensing requirements.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships vessels that process whiting and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. In order for a vessel to participate in a particular whiting fishery sector, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.336.

* * * * *

[FR Doc. E9–5066 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 45
Tuesday, March 10, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. PA–23, PA–31, and PA–42 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) PA–23 series airplanes and all PA–31 and PA–42 series airplanes. This proposed AD would establish life limits for safety-critical nose baggage door components. This proposed AD would also require you to replace those safety-critical nose baggage door components and repetitively inspect and lubricate the nose baggage door latching mechanism and lock assembly. This proposed AD results from several incidents and accidents, including fatal accidents, where the nose baggage door opening in flight was listed as a causal factor. We are proposing this AD to detect and correct worn, corroded, or non-conforming nose baggage door components, which could result in the nose baggage door opening in flight. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

DATES: We must receive comments on this proposed AD by May 11, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Noles, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6085; fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–0218; Directorate Identifier 2009–CE–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

On January 5, 2008, a Piper PA–31–350 airplane crashed shortly after takeoff. The National Transportation Safety Board preliminary report of the fatal accident indicates the nose baggage door opened in flight. Our investigation of the accident indicates the nose baggage door opening in flight was a causal factor in the accident. The investigation also indicated that the baggage door did not conform to the type design and was not in a condition for safe operation. We have also received several other incident and accident reports where the nose baggage door opening in flight was listed as a causal factor.

Our investigation of PA–31 airplanes has found additional nonconforming nose baggage door components. Examples of problems discovered are: key locks that have been replaced with locks that allow the key to be removed when the door is unlocked; bent, corroded, worn, or broken parts; parts installed backwards; inoperative warning systems; and installation of secondary latches that are not strong enough to secure the door in a closed position.

This condition, if not corrected, could result in the nose baggage door opening in flight. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

Relevant Service Information

We have reviewed Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.

The service information describes procedures for:

- Repetitive inspection of the nose baggage door latching mechanism and lock assembly and replacement of life limited parts as identified in the service bulletin; and
- Repetitive lubrication and inspection of the nose baggage door latching and locking components.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to replace safety-critical nose baggage door components and repetitively inspect and lubricate the nose baggage door latching mechanism and lock assembly. This proposed AD would also establish life limits for

safety-critical nose baggage door components.

Differences Between This Proposed AD and the Service Information

The applicability of this AD is expanded to include Models PA–23, PA–23–160, and PA–23–235 airplanes that have a nose baggage door installed. These models were not manufactured with a nose baggage door and are not included in Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008. However there are PA–23, PA–23–160, and PA–23–235 airplanes in service that may have been modified with the applicable nose baggage door installed. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 8,000 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection and parts replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	$190	$510	$4,080,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piper Aircraft, Inc.: Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by May 11, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–23–250 (Navy UO–1), PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, PA–42–1000, and PA–E23–250 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a baggage door in the fuselage nose section (a nose baggage door).

Unsafe Condition

(d) This AD results from several incidents and accidents, including some fatal accidents, where the nose baggage door opening in flight was listed as a causal factor. We are issuing this AD to detect and correct worn, corroded, or non-conforming nose baggage door components, which could result in the nose baggage door opening in flight. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) For all aircraft: (i) Inspect the nose baggage door assembly for damaged, worn, or corroded components; (ii) Replace life-limited components specified in the service information; and (iii) Install or inspect, as applicable, the nose baggage placard following the service information.	(A) *Initially:* Within 1,000 hours time-in-service (TIS) since all life-limited components were installed new following Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; and (B) *Repetitively thereafter:* At intervals not to exceed 1,000 hours TIS.	Follow INSTRUCTIONS: PART I of Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.
(2) For all aircraft: (i) Lubricate and inspect all nose baggage door latching and locking components for damaged, worn, or corroded components; and (ii) Verify the key can only be removed from the lock assembly in the locked position in accordance with the service instructions.	(A) *Initially:* Within 100 hours TIS after the effective date of this AD; and (B) *Repetitively thereafter:* At intervals not to exceed 100 hours TIS.	Follow INSTRUCTIONS: PART II of Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.
(3) For all aircraft with damaged, worn, or corroded components: Repair/replace any damaged, worn, or corroded components.	Before further flight after any inspection required in paragraphs (e)(1) and (e)(2) of this AD where any evidence of damaged, worn, or corroded components was found.	Follow Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta 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:* Gregory K. Noles, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6085; fax: (770) 703–6097. 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.

Related Information

(g) To get copies of the service information referenced in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on March 3, 2009.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–4987 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0212; Directorate Identifier 2008–NM–122–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Boeing Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. This proposed AD would require repetitive testing of the rudder pedal forces or repetitive detailed inspections of the inner spring of the rudder feel and centering unit, and corrective actions if necessary. This proposed AD also requires replacement of the spring assembly in the rudder feel and centering unit, which terminates the repetitive tests or inspections. This proposed AD results from reports of low rudder pedal forces that were caused by a broken inner spring in the rudder feel and centering unit; a broken inner spring in conjunction with a broken outer spring would significantly reduce rudder pedal forces. We are proposing this AD to prevent reduced rudder pedal forces, which could result in increased potential for pilot-induced oscillations and reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by April 24, 2009.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0212; Directorate Identifier 2008–NM–122–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of low rudder pedal forces that were caused by a broken inner spring in the rudder feel and centering unit; a broken inner spring in conjunction with a broken outer spring would significantly reduce rudder pedal forces. Investigation of the removed parts revealed the root cause of the spring failure to be a material defect within the raw material of the wire stock. Boeing determined which rudder feel and centering units could be affected based on one batch of raw material, and then determined which airplanes have discrepant springs installed. This condition, if not corrected, could result in reduced rudder pedal forces, which could result in increased potential for pilot-induced oscillations and reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008. The service bulletin describes procedures for repetitive testing of the rudder pedal forces or detailed repetitive inspections of the inner spring of the rudder feel and centering unit, and corrective actions if necessary. The corrective actions include the following: If the rudder pedal force measured during the test is less than 60 pounds, the service bulletin describes procedures for replacing the spring assembly. If the rudder pedal force measured is higher than 82.0 pounds, the service bulletin describes procedures for an adjustment to rudder control cables RA and RB and performing the rudder pedal forces test again. If an inner spring is found loose or there is an indication of failure during the detailed inspection, the service bulletin describes procedures for replacing the spring assembly.

The service bulletin also describes procedures for eventual replacement of the spring assembly in the rudder feel and centering unit and marking the letter 'R' after the serial number to indicate the replacement was done. The replacement would eliminate the need for the repetitive tests or inspections.

FAA's Determination and Requirements of this Proposed AD

We are issuing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

The airplanes identified in the effectivity section of the service bulletin are airplanes on which the discrepant springs were installed, and on which the inspection or testing and replacement would be required. However, the applicability in this proposed AD includes all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes because of the proposed requirement prohibiting future installation of the discrepant springs on those airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 70 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Test or Inspection	1	$80	$0	$80, per test or inspection cycle.	70	$5,600
Replacement	3	80	3,138	$3,378	70	236,460

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government.

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

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

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

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

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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2009–0212; Directorate Identifier 2008–NM–122–AD.

Comments Due Date

(a) We must receive comments by April 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of low rudder pedal forces that were caused by a broken inner spring in the rudder feel and centering unit; a broken inner spring in conjunction with a broken outer spring would significantly reduce rudder pedal forces. We are issuing this AD to prevent reduced rudder pedal forces, which could result in increased potential for pilot-induced oscillations and reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Compliance

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

Test/Inspection

(g) For Model 737–600, –700, –700C, –800, and –900 series airplanes identified in Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008: Within 30 days after the effective date of this AD, perform a test of the rudder pedal forces or a detailed inspection of the inner spring of the rudder feel and centering unit, by doing all the applicable actions, including all applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008. Repeat the test or inspection thereafter at intervals not to exceed 120 days.

Terminating Action

(h) For Model 737–600, –700, –700C, –800, and –900 series airplanes identified in Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008: Within 36 months after the effective date of this AD, replace the spring assembly in the rudder feel and centering unit in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008. Accomplishing the replacement ends the repetitive tests or inspections required by paragraph (g) of this AD.

Parts Installation

(i) For all airplanes: As of the effective date of this AD, no person may install, on any airplane, a rudder feel and centering unit having part number (P/N) 65C25410–7, serial numbers 3609 through 3820 inclusive, unless it has been modified according to paragraph (h) of this AD.

No Reporting Required

(j) Boeing Alert Service Bulletin 737–27A1287, dated April 16, 2008, specifies sending a data reporting sheet to Boeing; however, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; 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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, in the FAA Flight Standards District Office (FSDO), or lacking a principal inspector, your local FSDO. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5015 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0211; Directorate Identifier 2008–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * * *

[B]ogie beam internal paint has been degraded, leading to a loss of cadmium plating and thus allowing development of corrosion pitting.

If not corrected, this situation under higher speed could result in the aircraft departing the runway or in the bogie [beam] detaching from the aircraft or [main landing] gear collapses, which would constitute an unsafe condition.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 9, 2009.

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

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

Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* For Messier-Dowty service information identified in this proposed AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services.messier-dowty.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0211; Directorate Identifier 2008–NM–028–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0093, dated May 20, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The operator of an A330 aircraft (which has a common bogie beam with the A340) has reported a fracture of the RH (right-hand) MLG (main landing gear) Bogie Beam whilst turning during low speed taxi maneuvers. The bogie [beam] fractured aft of the pivot point and remained attached to the sliding tube by the brake torque reaction rods. After this RH bogie [beam] failure, the aircraft continued for approximately 40 meters on the forks of the sliding member before coming to rest on the taxiway without any passenger injury.
>
> The preliminary investigations revealed that this event was due to corrosion pitting occurring on the bore of the bogie beam. Investigations are ongoing to determine why bogie beam internal paint has been degraded, leading to a loss of cadmium plating and thus allowing development of corrosion pitting.
>
> If not corrected, this situation under higher speed could result in the aircraft departing the runway or in the bogie [beam] detaching from the aircraft or [main landing] gear collapses, which would constitute an unsafe condition.
>
> To enable early detection and repair of any corrosion of the internal surfaces, EASA AD 2007–0314 required a one-time inspection on all MLG Bogie Beams except Enhanced MLG Bogie Beams and the reporting of the results to AIRBUS.
>
> The Revision 1 of AD 2007–0314 aimed to clarify the compliance time of the inspection and to extend the reporting period.
>
> The present AD which supersedes the AD 2007–0314R1:
>
> —Takes over the AD 2007–0314R1 requirements and
>
> —Reduces the inspection threshold from 6 to 4.5 years due to significant findings on the inspected aircraft.

Required actions include applying protective treatments to the bogie beam and corrective actions. Corrective actions include repair of any damaged or corroded surfaces or surface treatments; and contacting Messier-Dowty for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus and Messier-Dowty have issued the service information described in the following table. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

SERVICE INFORMATION

Service Bulletin	Date
Airbus Mandatory Service Bulletin A330–32–3225, including Appendix 01	November 21, 2007.
Airbus Mandatory Service Bulletin A340–32–4268, including Appendix 01	November 21, 2007.
Messier-Dowty Service Bulletin A33/34–32–271, including Appendix A	September 13, 2007.
Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D	November 16, 2007.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those

in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 29 products of U.S. registry. We also estimate that it would take about 22 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $51,040, or $1,760 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2009–0211; Directorate Identifier 2008–NM–028–AD.

Comments Due Date

(a) We must receive comments by April 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; certificated in any category; all certified models; all serial numbers, except those on which Airbus modification 54500 has been embodied in production or Airbus Service Bulletin A330–32–3212 has been embodied in service.

Subject

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

Reason

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

''The operator of an A330 aircraft (which has a common bogie beam with the A340) has reported a fracture of the RH (right-hand) MLG (main landing gear) Bogie Beam whilst turning during low speed taxi maneuvers. The bogie [beam] fractured aft of the pivot point and remained attached to the sliding tube by the brake torque reaction rods. After this RH bogie [beam] failure, the aircraft continued for approximately 40 meters on the forks of the sliding member before coming to rest on the taxiway without any passenger injury.

''The preliminary investigations revealed that this event was due to corrosion pitting occurring on the bore of the bogie beam. Investigations are ongoing to determine why bogie beam internal paint has been degraded, leading to a loss of cadmium plating and thus allowing development of corrosion pitting.

''If not corrected, this situation under higher speed could result in the aircraft departing the runway or in the bogie [beam] detaching from the aircraft or [main landing] gear collapses, which would constitute an unsafe condition.

''To enable early detection and repair of any corrosion of the internal surfaces, EASA AD 2007–0314 required a one-time inspection on all MLG Bogie Beams except Enhanced MLG Bogie Beams and the reporting of the results to AIRBUS.

''The Revision 1 of AD 2007–0314 aimed to clarify the compliance time of the inspection and to extend the reporting period.

''The present AD which supersedes the AD 2007–0314R1:

—Takes over the AD 2007–0314R1 requirements and

—Reduces the inspection threshold from 6 to 4.5 years due to significant findings on the inspected aircraft.''

Required actions include applying protective treatments to the bogie beam and corrective actions. Corrective actions include repair of any damaged or corroded surfaces or surface treatments; and contacting Messier-Dowty for repair instructions and doing the repair.

Actions and Compliance

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

(1) At the applicable compliance time specified in paragraph (f)(2) or (f)(3) of this AD: Clean the internal bore and perform a detailed visual inspection of internal surfaces of the MLG bogie beam (right-hand and left-hand) for any damage to the protective treatments or any corrosion, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3225 or A340–32–4268, both dated November 21, 2007; as applicable.

(i) If no damage and corrosion is found, before further flight, apply the protective treatments of the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D, dated November 16, 2007.

(ii) If any damage or corrosion is found, before further flight, do all applicable corrective actions and apply the protective treatments of the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D, dated November 16, 2007.

(2) For airplanes with 54 months or less time-in-service since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness as of the effective date of this AD: At the latest of the applicable times specified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD, do the actions required by paragraph (f)(1) of this AD.

(i) Not before 54 months since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness, but no later than 72 months since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(ii) Not before 54 months since the installation of a new bogie beam in-service

before the effective date of this AD, but no later than 72 months since the installation of a new bogie beam in-service before the effective date of this AD.

(iii) Not before 54 months since the last overhaul of a bogie beam before the effective date of this AD, but no later than 72 months since the last overhaul of a bogie beam before the effective date of this AD.

(3) For airplanes with more than 54 months time-in-service since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness as of the effective date of this AD: At the applicable time specified in paragraph (f)(3)(i), (f)(3)(ii), (f)(3)(iii), (f)(3)(iv), or (f)(3)(v) of this AD, do the actions required by paragraph (f)(1) of this AD.

(i) For airplanes on which the bogie beam has not been replaced or overhauled since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness as of the effective date of this AD: Within 18 months after the effective date of this AD.

(ii) For airplanes on which the bogie beam has been replaced in-service with a new bogie beam and the new bogie beam has more than 54 months time-in-service as of the effective date of this AD: Within 18 months after the effective date of this AD.

(iii) For airplanes on which the bogie beam has been replaced in-service with a new bogie beam and the new bogie beam has 54 months or less time-in-service as of the effective date of this AD: Not before 54 months since the installation of a new bogie beam in-service before the effective date of this AD, but no later than 72 months since the installation of a new bogie beam in-service before the effective date of this AD.

(iv) For airplanes on which the bogie beam has been overhauled and the overhauled bogie beam has more than 54 months time-in-service as of the effective date of this AD: Within 18 months after the effective date of this AD, or at the next scheduled bogie beam overhaul, whichever occurs first.

(v) For airplanes on which the bogie beam has been overhauled and the overhauled bogie beam has 54 months or less time-in-service as of the effective date of this AD: Not before 54 months since the last overhaul of a bogie beam before the effective date of this AD, but no later than 72 months since the last overhaul of a bogie beam before the effective date of this AD.

(4) Within 30 days after accomplishment of the inspection required by paragraph (f)(1) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the results, including no findings, to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; e-mail *airworthiness.A330-A340@airbus.com.*

(5) Actions accomplished in accordance with Messier-Dowty Service Bulletin A33/34–32–271, including Appendix A, dated September 13, 2007, are considered acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI specifies repair and corrective actions in accordance with Airbus Mandatory Service Bulletin A330–32–3225 or A340–32–4268, both dated November 21, 2007; however, the Airbus service bulletins do not describe those actions. Paragraphs (f)(1)(i) and (f)(1)(ii) of this AD specify repair and corrective actions in accordance with Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D, dated November 16, 2007.

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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0093, dated May 20, 2008, and the service bulletins specified in Table 1 of this AD, for related information.

TABLE 1—SERVICE INFORMATION

Service Bulletin	Date
Airbus Mandatory Service Bulletin A330–32–3225, including Appendix 01	November 21, 2007.
Airbus Mandatory Service Bulletin A340–32–4268, including Appendix 01	November 21, 2007.
Messier-Dowty Service Bulletin A33/34–32–271, including Appendix A	September 13, 2007.
Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D	November 16, 2007.

Issued in Renton, Washington, on February 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5062 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0213; Directorate Identifier 2008–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require installing fuses and wire protection in certain wing and fuel tank spars. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent possible damage to the fuel level float or pressure switch wires. Such damage could become a potential ignition source inside the fuel tank, and, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 24, 2009.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0213; Directorate Identifier 2008–NM–224–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

We have received a report that fuel level float switch wires located on the left and right wing forward spar, center fuel tank forward spar and forward auxiliary fuel tank, and pressure switch wires located on the center fuel tank forward spar are routed in the same bundles as power wires. If a short circuit between a fuel level float or pressure switch wire and a power wire occurs, an over current can cause excessive temperatures in the fuel level float or pressure switch wires, resulting in damage and becoming a potential ignition source. This condition, if not corrected, could result in possible damage to the fuel level float or pressure switch wires, and become a potential ignition source for the fuel tank.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD90–28–012, dated November 19, 2008. The service bulletin describes procedures for installing fuses and wire protection in certain wing and fuel tank spars. For Group 1, the service bulletin describes procedures for installing fuel level float switch in-line fuses and wire protection in the left and right wing forward spars and center fuel tank forward spar, right side. For Group 2, the service bulletin describes procedures for installing fuel level float switch in-line fuses and wire protection in the left and right wing forward spars, center fuel tank forward spar, right side, and forward auxiliary fuel tank, right side; and installing a fuel pressure switch in-line fuse and wire protection in the center fuel tank forward spar, left side.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the

actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 15 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation, depending on Group.	20 or 26	$80	$1,132 or $1,822 ...	$2,732 or $3,902 ...	15	$40,980 to $58,530.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2009–0213; Directorate Identifier 2008–NM–224–AD.

Comments Due Date

(a) We must receive comments by April 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–90–30 airplanes, certificated in any category, excluding fuselage number 2159.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible damage to the fuel level float or pressure switch wires. Such damage could become a potential ignition source inside the fuel tank, and, when combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation

(g) Within 5 years after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90–28–012, dated November 19, 2008 (''the service bulletin'').

(1) For Group 1 airplanes identified in the service bulletin, install fuel level float switch in-line fuses and wire protection in the left and right wing forward spars and center fuel tank forward spar, right side.

(2) For Group 2 airplanes identified in the service bulletin, install fuel level float switch in-line fuses and wire protection in the left and right wing forward spars, center fuel tank forward spar, right side, and forward auxiliary fuel tank, right side; and install a fuel pressure switch in-line fuse and wire protection in the center fuel tank forward spar, left side.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5014 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–325P]

Schedules of Controlled Substances: Placement of Lacosamide into Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide] and all products containing lacosamide into Schedule V of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized as proposed, this action will impose the regulatory controls and criminal sanctions applicable to Schedule V non-narcotics on those who handle lacosamide and products containing lacosamide.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before April 9, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–325'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152 or by phone at (202) 307–7183.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Note Regarding This Scheduling Action

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). Interested persons are invited to submit their comments, objections or requests for a hearing with regard to this proposal. Requests for a hearing should be made in accordance with 21 CFR 1308.44 and should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Background

Lacosamide, known chemically as (*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide, is a central nervous system depressant drug with a mechanism of action different from those of other central nervous system depressants (e.g, benzodiazepines, barbiturates etc.) that are controlled under the CSA. Unlike other depressant drugs (benzodiazepines, barbiturates etc.), lacosamide does not act on the gamma amino butyric acid (GABA) system and does not have biologically significant affinity at numerous receptors, channels and transporters that are associated with known drugs of abuse. Although the precise mechanism of action of lacosamide remains undetermined, in vitro studies suggest that it causes selective enhancement of slow inactivation of voltage-gated sodium channels and binds to the collapsing response mediator protein 2 (CRMP–2).

On October 28, 2008, the Food and Drug Administration (FDA) approved lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide] for marketing under the trade name Vimpat® for use as an adjunctive therapy in treatment of partial-onset seizures in patients with epilepsy aged 17 years and older.

Animal studies have demonstrated that lacosamide protects against seizures in various anticonvulsant models and produces antinociceptive effects in preclinical neuropathic pain models. Animal studies also indicate that

lacosamide has abuse potential. Lacosamide produces dose dependent sedative-type behaviors in rats. In drug discrimination tests, Schedule IV drugs, alprazolam and phenobarbital, partially generalizes to lacosamide in rats trained to recognize lacosamide.

Clinical studies also indicate that lacosamide has abuse potential. In a clinical study with recreational abusers of sedative hypnotic drugs, lacosamide, similar to alprazolam, produced subjective responses of ''sedation,'' ''high,'' ''euphoria,'' ''drug liking,'' and ''good drug effects'' similar to alprazolam. These effects of lacosamide were shorter in duration as compared to those of alprazolam. In clinical pharmacokinetic and electrocardiographic studies, healthy subjects reported a high rate of euphoria-type responses following lacosamide administration, suggesting its ability to produce psychological dependence. The data from animal and human studies indicate that chronic administration of lacosamide does not produce physical dependence, as there were no withdrawal symptoms upon its discontinuation.

Adverse events from clinical studies included cognitive disorder, disturbance in attention, mood alteration, depressed mood, irritability, feeling drunk, memory impairment, somnolence, and dizziness. These and other data indicate that public health risks of lacosamide are similar, but in a lower intensity and shorter duration, to those of other sedative hypnotics and central nervous system depressants, such as benzodiazepines.

Lacosamide is a new molecular entity and has not been marketed in the United States. As such, there has been no evidence of diversion, abuse, and law enforcement encounters involving lacosamide.

On December 2, 2008, the Assistant Secretary for Health of the DHHS sent the Administrator of the DEA a scientific and medical evaluation and a letter recommending that lacosamide be placed into Schedule V of the CSA. Enclosed with the December 2, 2008 letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Lacosamide in Schedule V of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The factors considered by the Acting Assistant Secretary of Health and DEA with respect to lacosamide were:

1. Its actual or relative potential for abuse;

2. Scientific evidence of its pharmacological effects;

3. The state of current scientific knowledge regarding the drug;

4. Its history and current pattern of abuse;

5. The scope, duration, and significance of abuse;

6. What, if any, risk there is to the public health;

7. Its psychic or physiological dependence liability; and

8. Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Acting Assistant Secretary for Health, DHHS, received in accordance with § 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to §§ 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

1. Lacosamide has a low potential for abuse relative to the drugs or other substances in Schedule IV;

2. Lacosamide has a currently accepted medical use in treatment in the United States; and

3. Abuse of lacosamide may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

Based on these findings, the Deputy Administrator of the DEA concludes that lacosamide and all products containing lacosamide, warrant control in Schedule V of the CSA.

Interested persons are invited to submit their comments, objections or requests for a hearing with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the DEA using the address information provided above. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Requirements for Handling Lacosamide

If this rule is finalized as proposed, lacosamide and all products containing lacosamide would be subject to the CSA and the Controlled Substances Import and Export Act (CSIEA) regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a Schedule V controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with lacosamide, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with lacosamide, would need to be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations (CFR).

Security. Lacosamide would be subject to Schedule III–V security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77 of Title 21 of the CFR.

Labeling and Packaging. All labels and labeling for commercial containers of lacosamide which are distributed on or after finalization of this rule would need to comply with requirements of §§ 1302.03–1302.07 of Title 21 of the CFR.

Inventory. Every registrant required to keep records and who possesses any quantity of lacosamide would be required to keep an inventory of all stocks of lacosamide on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the CFR. Every registrant who desires registration in Schedule V for lacosamide would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the CFR.

Prescriptions. All prescriptions for lacosamide or prescriptions for products containing lacosamide would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21, 1306.23–1306.27.

Importation and Exportation. All importation and exportation of lacosamide would need to be in compliance with part 1312 of Title 21 of the CFR.

Criminal Liability. Any activity with lacosamide not authorized by, or in violation of, the CSA or the CSIEA occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record

after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, § 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Lacosamide products will be prescription drugs used for the treatment of partial-onset seizures. Handlers of lacosamide often handle other controlled substances used in the treatment of central nervous system disorders which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by § 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.15 is amended by revising paragraph (e)(1) adding a new paragraph (e)(2) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(e) * * *

(1) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide]—2746

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]—2782

Dated: February 26, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–4890 Filed 3–9–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 88

RIN 0991–AB49

Rescission of the Regulation Entitled ''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law''; Proposal

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services proposes to rescind the December 19, 2008 final rule entitled ''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.'' The Department believes it is important to have an opportunity to review this regulation to ensure its consistency with current Administration policy and to reevaluate the necessity for regulations implementing the Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment.

DATES: Submit written or electronic comment on the regulatory changes proposed by this document by April 9, 2009.

ADDRESSES: In commenting, please refer to ''Rescission Proposal.'' To better manage the comment process, we will not accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.Regulations.gov* or via e-mail to *proposedrescission@hhs.gov.* To submit electronic comments to *http://www.Regulations.gov,* go to the Web site and click on the link ''Comment or Submission'' and enter the keywords ''Rescission Proposal.'' [Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.]

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Office of Public Health and Science, Department of Health and Human Services, Attention: Rescission Proposal Comments, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 716G, Washington, DC 20201.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Office of Public Health and Science, Department of Health and Human Services, Attention: Rescission Proposal Comments, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 716G, Washington, DC 20201.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to the following address: Room 716G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the documents being filed.)

Inspection of Public Comments: All comments received before the close of

the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.Regulations.gov.* Click on the link ''Comment or Submission'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Service (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web (the Superintendent of Documents' home page address is *http://www.gpoaccess.gov/*), by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Mahak Nayyar, (240) 276–9866, Office of Public Health and Science, Department of Health and Human Services, Room 716G, Hubert E. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Background

Several provisions of federal law prohibit recipients of certain federal funds from coercing individuals in the health care field into participating in actions they find religiously or morally objectionable.

Conscience Clauses/Church Amendments [42 U.S.C. 300a–7]

The conscience provisions contained in 42 U.S.C. 300a–7 (collectively known as the ''Church Amendments'') were enacted at various times during the 1970s in response to debates over whether receipt of federal funds required the recipients of such funds to perform abortions or sterilizations. The first conscience provision in the Church Amendments, 42 U.S.C. 300a–7(b), provides that ''[t]he receipt of any grant, contract, loan, or loan guarantee under [certain statutes implemented by the Department of Health and Human Services] by any individual or entity does not authorize any court or any public official or other public authority to require'' (1) The individual to perform or assist in a sterilization procedure or an abortion, if it would be contrary to his/her religious beliefs or moral convictions; (2) the entity to make its facilities available for sterilization procedures or abortions, if the performance of sterilization procedures or abortions in the facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or (3) the entity to provide personnel for the performance or assistance in the performance of sterilization procedures or abortions, if it would be contrary to the religious beliefs or moral convictions of such personnel.

The second conscience provision in the Church Amendments, 42 U.S.C. 300a–7(c)(1), prohibits any entity that receives a grant, contract, loan, or loan guarantee under certain Department-implemented statutes from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or the extension of staff or other privileges because the individual ''performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.''

The third conscience provision, contained in 42 U.S.C. 300a–7(c)(2), prohibits any entity that receives a grant or contract for biomedical or behavioral research under any program administered by the Department from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or extension of staff or other privileges ''because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.''

The fourth conscience provision, 42 U.S.C. 300a–7(d), provides that ''[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [the Department] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.''

The final conscience provision contained in the Church Amendments, 42 U.S.C. 300a–7(e), prohibits any entity that receives a grant, contract, loan, loan guarantee, or interest subsidy under certain Departmentally implemented statutes from denying admission to, or otherwise discriminating against, ''any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.''

Public Health Service Act Sec. 245 [42 U.S.C. 238n]

Enacted in 1996, section 245 of the Public Health Service Act (PHS Act) prohibits the federal government and any State or local government receiving federal financial assistance from discriminating against any health care entity on the basis that the entity (1) ''Refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;'' (2) refuses to make arrangements for such activities; or (3) ''attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.'' For the purposes of this protection, the statute defines ''financial assistance'' as including, ''with respect to a government program,'' ''governmental payments provided as reimbursement for carrying out health-related activities.'' In addition, PHS Act

Sec. 245 requires that, in determining whether to grant legal status to a health care entity (including a State's determination of whether to issue a license or certificate), the federal government and any State or local government receiving federal financial assistance shall deem accredited any post-graduate physician training program that would be accredited, but for the reliance on an accrediting standard that, regardless of whether such standard provides exceptions or exemptions, requires an entity: (1) to perform induced abortions; or (2) to require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training.

Weldon Amendment

The Weldon Amendment, originally adopted as section 508(d) of the Labor-HHS Division (Division F) of the 2005 Consolidated Appropriations Act, Public Law 108–447, 118 Stat. 2809, 3163 (Dec. 8, 2004), has been readopted (or incorporated by reference) in each subsequent HHS appropriations act. Title V of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, Public Law 109–149, Sec. 508(d), 119 Stat. 2833, 2879–80 (Dec. 30, 2005); Revised Continuing Appropriations Resolution of 2007, Public Law 110–5, Sec. 2, 121 Stat. 8, 9 (Feb. 15, 2007); Consolidated Appropriations Act, 2008, Public Law 110–161, Div. G, Sec. 508(d), 121 Stat. 1844, 2209 (Dec. 26, 2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008). The Weldon Amendment provides that ''[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.'' It also defines ''health care entity'' to include ''an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.''

Rulemaking

No statutory provision requires the promulgation of rules to implement the requirements of the Church Amendments, Public Health Service (PHS) Act Sec. 245, and the Weldon Amendment. Nevertheless, on August 26, 2008, the Department exercised its discretion and issued a proposed rule entitled ''Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law'' (73 FR 50274). Citing concerns that the development of an environment in the health care field that is intolerant of individual conscience, certain religious beliefs, ethnic and cultural traditions, and moral convictions may discourage individuals from diverse backgrounds from entering health care professions, the Department concluded that regulations were necessary in order to (1) Educate the public and health care providers on the obligations imposed, and protections afforded, by federal law; (2) work with State and local governments and other recipients of funds from the Department to ensure compliance with the nondiscrimination requirements embodied in the Church Amendments, PHS Act Sec. 245, and the Weldon Amendment; (3) when such compliance efforts prove unsuccessful, enforce these nondiscrimination laws through the various Department mechanisms, to ensure that Department funds do not support coercive or discriminatory practices, or policies in violation of federal law; and (4) otherwise take an active role in promoting open communication within the healthcare industry, and between providers and patients, fostering a more inclusive, tolerant environment in the health care industry than may currently exist.

A wide variety of individuals and organizations, including private citizens, individual and institutional health care providers, religious organizations, patient advocacy groups, professional organizations, universities and research institutions, consumer organizations, and State and federal agencies and representatives, commented on the proposed rule. Comments dealt with a range of issues surrounding the proposed rule, including the need for the rule, what kinds of workers would be protected by the proposed rule, the rule's relationship to Title VII of the Civil Rights Act and other statutes and protections, what services are covered by the rule, whether health care workers might use the regulation to discriminate against patients, what significant implementation issues could be associated with the rule, legal arguments, the cost impacts and the public health consequences of the rule.

On December 19, 2008, the Department issued a final rule (73 FR 78072). The Department saw a need to balance the rights of patients in obtaining legal health care services against the statutory rights of providers in the context of federally funded entities not to be discriminated against based on a refusal to participate in a service to which they have objections. Thus, the Department imposed an additional certification requirement by specifically including a reference to the nondiscrimination provisions contained in the Church Amendments, PHS Act Sec. 245, and the Weldon Amendment in certifications currently required of most existing and potential recipients of Department funds. The final rule went into effect on January 20, 2009, except that Department components have been given discretion to phase in the written certification requirement by no later than the beginning of the next federal fiscal year following the effective date of the regulation. Furthermore, the certification requirement is not effective pending completion of the information collection process under the Paperwork Reduction Act. The 60-day comment period on the information collection expired on February 27, 2009, and OMB approval for the information collection has not yet been sought.

II. Proposed Rule

The Department is proposing to rescind in its entirety the final rule entitled ''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law,'' published in the **Federal Register** on December 19, 2008 (73 FR 78072, 45 CFR Part 88). Commenters asserted that the rule would limit access to patient care and raised concerns that individuals could be denied access to services, with effects felt disproportionately by those in rural areas or otherwise underserved. The Department believes that the comments on the August 2008 proposed rule raised a number of questions that warrant further careful consideration. It is important that the Department have the opportunity to review this regulation to ensure its consistency with current Administration policy. Accordingly, we believe it would benefit the Department to review this rule, accept further comments, and reevaluate the necessity for regulations implementing the statutory requirements. Thus, the Department is proposing to rescind the

December 19, 2008 final rule, and we are soliciting public comment to aid our consideration of the many complex questions surrounding the issue and the need for regulation in this area.

III. Statutory Authority

The Secretary proposes to rescind the December 19, 2008 final rule entitled ''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.'' As discussed above, the Church Amendments, section 245 of the PHS Act, and the Weldon Amendment require, among other things, that the Department and recipients of Department funds (including State and local governments) refrain from discriminating against institutional and individual health care entities for their participation in certain medical procedures or services, including certain health services, or research activities funded in whole or in part by the federal government. No statutory provision, however, requires promulgation of a rule such as that published on December 19, 2008. This proposed rule is being issued pursuant to the authority of 5 U.S.C. 301, which empowers the head of an Executive department to prescribe regulations ''for the government of his department, the conduct of his employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.''

IV. Request for Comment

The Department, in order to determine whether or not to rescind the final rule in part or in its entirety, seeks comments. In particular, the Department seeks the following:

1. Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for federal rulemaking and how the current rule would resolve those problems;

2. Information, including specific examples where feasible, supporting or refuting allegations that the December 19, 2008 final rule reduces access to information and health care services, particularly by low-income women;

3. Comment on whether the December 19, 2008 final rule provides sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule; and

4. Comment on whether the objectives of the December 19, 2008 final rule might also be accomplished through non-regulatory means, such as outreach and education.

V. Impact Analysis

Executive Order 12866—Regulatory Planning and Review

HHS has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a single sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. This proposed rule is not significant under these economic standards. However, under Executive Order 12866, a regulation is also considered a significant regulatory action if it raises novel legal or policy issues. Because HHS previously determined that the December 19, 2008 final rule was a significant regulatory action under this standard, HHS will assume that the proposed rescission of the December 19, 2008 final rule is also a significant regulatory action.

The December 19, 2008 final rule estimated the quantifiable costs associated with the certification requirements of the proposed regulation to be $43.6 million each year. Rescinding the rule would therefore result in a cost savings of $43.6 million each year to the health care industry.

Regulatory Flexibility Act

HHS has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (RFA). If a rule has a significant economic burden on a substantial number of small entities, the RFA requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities by virtue of either nonprofit status or having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. The position of the Department has long been that the RFA requirements for regulatory flexibility analysis only apply to rules that create significant adverse impacts on small entities. Rescission of the final rule may create positive impacts on small entities by removing any burdens imposed by that rule. Accordingly, we certify that this proposed rule will not have a significant effect on a substantial number of small entities.

Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts State law, or otherwise has federalism implications. This proposed rule would not require additional steps to meet the requirements of Executive Order 13132 because it removes any burden imposed by the December 19, 2008 final rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires cost-benefit and other analysis before any rulemaking if the rule includes a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is approximately $130 million. The Department has determined that this proposed rule would not constitute a significant rule under the Unfunded Mandates Reform Act, because it would rescind rather than impose mandates.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. This regulation will not have an impact on family well-being, as defined in the Act, because it affects only regulated entities and eliminates costs that would otherwise be imposed on those entities.

Paperwork Reduction Act of 1995

This proposed rule does not create any new requirements under the Paperwork Reduction Act of 1995. Instead, it proposes to eliminate

requirements that would be imposed by the final rule issued on December 19, 2008. The 60-day comment period on the information collection requirements of the December 19, 2008 final rule expired on February 27, 2009, and OMB approval for the information collection requirements has not yet been sought.

List of Subjects in 45 CFR Part 88

Abortion, Civil rights, Colleges and universities, Employment, Government contracts, Government employees, Grant programs, Grants administration, Health care, Health insurance, Health professions, Hospitals, Insurance companies, Laboratories, Medicaid, Medical and dental schools, Medical research, Medicare, Mental health programs, Nursing homes, Public health, Religious discrimination, Religious liberties, Reporting and recordkeeping requirements, Rights of conscience, Scientists, State and local governments, Sterilization, Students.

Dated: March 5, 2009.

Charles E. Johnson,

Acting Secretary.

PART 88—[REMOVED AND RESERVED]

Therefore, under 5 U.S.C. 301, the Department of Health and Human Services proposes to remove and reserve 45 CFR part 88.

[FR Doc. E9–5067 Filed 3–6–09; 11:15 am]

BILLING CODE 4150–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0078; 92210–1117–0000–B4]

RIN 1018–AV03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Cirsium loncholepis (La Graciosa thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed revised designation of critical habitat for *Cirsium loncholepis* (common name La Graciosa thistle) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the January 16, 2009, draft economic analysis (DEA) of the proposed revised designation of critical habitat for *C. loncholepis* and announce an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised designation of critical habitat for *C. loncholepis,* the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted. These comments have already been incorporated into the public record and will be fully considered in preparation of the final rule.

DATES: We will accept public comments received or postmarked on or before April 9, 2009.

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: RIN 1018–AV03; 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: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003, (telephone 805–644–1766; facsimile 805–644–3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the proposed revised designation of critical habitat for Cirsium loncholepis published in the **Federal Register** on August 6, 2008 (73 FR 45805), the DEA of the proposed revised designation of critical habitat for *Cirsium loncholepis,* and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

1. The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1533), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

2. Specific information on:

- The amount and distribution of *Cirsium loncholepis* habitat,
- The importance of including habitat that provides connectivity between extant populations of *Cirsium loncholepis* to the species' conservation and recovery, and the amount and distribution of such habitat,
- What areas occupied at the time of listing and that contain features essential for the conservation of the species should be included in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

3. Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised designation of critical habitat for *Cirsium loncholepis.*

4. Probable economic, national security, or other impacts from designating particular areas as critical habitat. We are particularly interested in any impacts on small entities and specific impacts on national security, and the benefits of including or excluding areas that exhibit these impacts.

5. Any proposed critical habitat areas covered by existing or proposed conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request information on any final or draft habitat conservation plans that include *Cirsium loncholepis* as a covered species that have been prepared under section 10(a)(1)(B) of the Act, or any other management plan, conservation plan, or agreement that benefits this plant or its primary constituent elements.

6. Land use designations and current or planned activities in the subject areas and their possible impacts on the proposed revised designation of critical habitat for *Cirsium loncholepis.*

7. Additional scientific information that will help us to better delineate areas that contain the primary constituent elements.

8. Any foreseeable environmental impacts directly or indirectly resulting from the proposed revised designation of critical habitat for *Cirsium loncholepis.*

9. Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate proposed revised critical habitat for *Cirsium loncholepis.*

10. Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the proposed revised designation of critical habitat for *Cirsium loncholepis.*

11. Information on whether the proposed revised designation of critical habitat will result in disproportionate economic impacts to specific areas or small businesses that should be evaluated under 4(b)(2) of the Act for possible exclusion from the proposed revised designation of critical habitat for *Cirsium loncholepis* and whether the failure to designate such areas as critical habitat will result in the extinction of *C. loncholepis.*

12. Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

13. Information on whether the DEA identifies all costs that could result from the proposed revised designation of critical habitat for *Cirsium loncholepis.*

14. Information on any quantifiable economic benefits of the proposed revised designation of critical habitat for *Cirsium loncholepis.*

15. Whether the benefits of excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular lands in Units 4, 5, and 6 covered by a draft endangered species conservation agreement for *Cirsium loncholepis* that was submitted to the Service by Vandenberg Air Force Base (VAFB) for further evaluation and consideration during the public comment period.

16. Information on any economic impacts associated with implementing the draft conservation agreement covering specified lands in Units 4, 5, and 6 submitted to the Service for further evaluation and consideration.

17. Economic data on the incremental costs of designating a particular area as revised critical habitat.

18. Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed revised designation of critical habitat for *Cirsium loncholepis* and, in particular, any impacts on electricity production, and the benefits of including or excluding areas that exhibit these impacts.

19. Whether we could improve or modify our approach to designating critical habitat to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

20. Information on potential critical habitat exclusions from the proposed revised designation of critical habitat for *Cirsium loncholepis.*

If you submitted comments or information on the proposed revised rule (73 FR 45805) during the initial comment period from August 6, 2008, to October 6, 2008, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations 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 (and have received), as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov* [Docket Number FWS–R8–ES–2008–0078], or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov,* or on our Web site at *http://www.fws.gov/ventura.*

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Cirsium loncholepis* in this notice. For more information on previous Federal actions concerning *C. loncholepis,* refer to the proposed revised designation of critical habitat published in the **Federal Register** on August 6, 2008 (73 FR 45805). For more information on the endangered *C. loncholepis* or its habitat, refer to the proposed and final listing rules published in the **Federal Register** on March 30, 1998 (63 FR 15164), and on March 20, 2000 (65 FR 14888), the proposed rule to designate critical habitat (66 FR 57559; November 15, 2001), and the final designation of critical habitat for *C. loncholepis* (69 FR 12553; March 17, 2004), or from the Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

In March 2005, the Homebuilders Association of Northern California, *et al.*, filed suit against the Service challenging the merits of the final critical habitat designations for several species, including *C. loncholepis.* In March 2006, a settlement was reached that required us to re-evaluate five final critical habitat designations, including critical habitat designated for *C. loncholepis.* The settlement (as modified by a court-approved amendment) stipulated that any proposed revisions to *C. loncholepis* critical habitat designation would be submitted for publication to the **Federal Register** on or before July 27, 2008, and final revisions would be submitted on or before July 27, 2009.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical

habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact, including but not limited to the value and contribution of continued, expanded, or newly forged conservation partnerships.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. In the case of *Cirsium loncholepis*, the benefits of critical habitat include public awareness of *C. loncholepis* presence and the importance of habitat protection, and where a Federal nexus exists, increased habitat protection for *C. loncholepis* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. Since *C. loncholepis* was listed in 2000, we have had few projects on privately owned lands that had a Federal nexus to trigger consultation under section 7 of the Act, and have consulted only once with a Federal agency regarding its effects to *C. loncholepis* on Federal lands.

When we evaluate the benefits of excluding an area being managed under an existing conservation plan, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of our August 6, 2008 (73 FR 45805), proposed revised designation of critical habitat for *Cirsium loncholepis*.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised designation of critical habitat for *Cirsium loncholepis*. Additionally, the economic analysis looks retrospectively at costs incurred since the March 20, 2000 (65 FR 14888), listing of *C. loncholepis* as endangered. The DEA quantifies the economic impacts of all potential conservation efforts for *C. loncholepis*; some of these costs will likely be incurred regardless of whether we designate revised critical habitat. The economic impact of the proposed revised designation of critical habitat for *C. loncholepis* is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated and may include costs incurred in the future. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised designation of critical habitat for *C. loncholepis*. For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis'', of the DEA.

The current DEA estimates the foreseeable economic impacts of the proposed revised designation of critical habitat for *Cirsium loncholepis* by identifying the potential resulting incremental costs. The DEA describes economic impacts of *C. loncholepis* conservation efforts associated with the following categories of activity: (1) Military activities on Vandenberg Air Force Base; (2) recreation (primarily off-highway vehicle use); (3) residential and commercial development; (4) agriculture and ranching; (5) oil and gas operations; and (6) other public lands management.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for *Cirsium loncholepis* not attributable to designation of critical habitat and thus are expected to occur regardless of whether we designate critical habitat. Total future baseline impacts are estimated to be $11.0 million ($720,000 annualized) to $320 million (approximately $20.9 million annualized) in present value terms using a 3 percent discount rate, and $10.4 million ($915,000 annualized) to $230 million (approximately $20.3 million annualized) in present value terms, using a 7 percent discount rate, over the next 20 years (2009 to 2028) in areas proposed as revised critical habitat. Impacts to recreation in Unit 1 (Callender-Guadalupe Dunes) represent the majority of the total post-designation baseline impacts (between 96 and 97 percent), depending on the discount rate.

Future baseline impacts for areas currently considered for exclusion were calculated separately from other areas proposed as revised critical habitat. The baseline impacts for VAFB were estimated to be between $0.21 million using a 3 percent discount rate, and $0.15 million using a 7 percent discount rate over the next 20 years (2009 to 2028).

The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2009 to 2028) to range from $405,000 ($26,500 annualized) to

$55.6 million ($3.6 million annualized) in present value terms using a 3 percent discount rate, and from $355,000 ($31,300 annualized) to $39.6 million ($3.5 million annualized) in present value terms using a 7 percent discount rate. Almost all incremental impacts attributed to the proposed revised designation of critical habitat are expected to be related to recreation (approximately 99.89 percent); the remaining incremental impacts are related to development and public lands management (approximately 0.11 percent).

The DEA 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 (*e.g.*, lost economic opportunities associated with restrictions on land use). The DEA 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 businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development, ranching and agriculture, and off-highway vehicle recreation, and its effects on Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed revised designation of critical habitat and our amended required determinations. We may revise the proposed rule or its supporting documents to incorporate or address information we receive during this public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Areas Considered for Exclusion

Department of Defense Lands

Based on comments submitted during the initial public comment period from August 6, 2008, to October 6, 2008, we are considering exclusion of lands on VAFB (13,832 ac (5,598 ha) total) in Units 4, 5, and 6 from critical habitat. In their comment letter, dated September 29, 2008, VAFB requested to be excluded from the revised designation of critical habitat based on: (1) Their draft Integrated Natural Resources Management Plan (INRMP), (2) a draft conservation agreement for *Cirsium loncholepis* (included as an appendix), and (3) reasons of national security.

Under section 4(a)(3)(B)(i) of the Act, the Secretary of the Interior (Secretary) is prohibited from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. An INRMP is currently being prepared in coordination with the Service that will ensure conservation of the species. However, because the INRMP is not yet final and approved by the Secretary, the statutory prohibition on designation of these lands as critical habitat is inapplicable.

We are also considering excluding these areas under section 4(b)(2) of the Act based on a draft endangered species conservation agreement for *Cirsium loncholepis* that proposes a *C. loncholepis* conservation partnership and agreement between VAFB and the Service. This draft conservation agreement focuses on the continuation of compliance with Federal and State laws, conducting surveys for federally listed species, and protecting and enhancing existing populations and habitats of threatened and endangered species. We are currently working with VAFB to complete this draft conservation agreement. We will assess the benefits of excluding VAFB lands included in this conservation agreement and consider these lands for exclusion from the revised critical habitat final rule under section 4(b)(2) of the Act. If this conservation agreement is finalized before the designation and our analysis results in a determination that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we will exclude the lands from the revised final designation, provided the exclusion will not result in the extinction of the species.

You may obtain a copy of the draft conservation agreement for lands on VAFB by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*, at *http://www.fws.gov/ventura*, or by requesting copies of these documents by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

We are also considering excluding these areas under section 4(b)(2) of the Act for reasons of national security. Lands may be excluded from designation as critical habitat if the Secretary determines that the benefits of exclusion, including the benefits with respect to national security, outweigh the benefits of inclusion, unless failure to designate that specific area as critical habitat will result in the extinction of the species, as explained below.

Vandenberg Air Force Base is a U.S. Air Force installation. It operates as a missile test and aerospace center, supporting west coast launch activities for the U.S. Air Force, Department of Defense, National Aeronautics and Space Administration, and commercial contractors. Vandenberg Air Force Base is headquarters for the 30th Space Wing, the Air Force's Space Command unit that operates VAFB and the western test range. Activities on the grounds of VAFB consist of the following:

- Mission operations such as:
  - Space and missile launch programs,
  - Security and antiterrorism operations,
  - Explosive ordnance management,
  - Air operations, and
  - Miscellaneous mission operations;
- Infrastructure support such as:
  - Paved and unpaved road maintenance,
  - Utility installation, maintenance and removal,
  - Landscaping, and
  - Fencing installation, maintenance, and replacement;
- Infrastructure development;
- Environmental management programs such as:
  - Installation restoration,
  - Military munitions response,
  - Environmental compliance,
  - Archeological support,
  - Invasive and pest species removal,
  - Cropland management,
  - Grazing and livestock, and
  - Sensitive species management; and
- Fire management.

Vandenberg Air Force Base stated in their comment letter submitted September 29, 2008, regarding the proposed revised designation of critical habitat that the need for additional consultations and possible conservation restrictions would limit the amount of natural infrastructure available for ongoing and future mission execution and training needed for national security; not designating these areas on

VAFB as critical habitat for *Cirsium loncholepis* would not result in the extinction of the species; and operations at VAFB do not constitute either a long-term threat or adverse modification of suitable *C. loncholepis* habitat. Short-notice, mission-critical activities not previously analyzed may be delayed in order to conduct section 7 consultations under the Act.

Aside from these areas now being considered for exclusion from the final revised designation of critical habitat, no other areas are being considered for exclusion and the proposed revised designation of critical habitat remains unchanged as presented.

Required Determinations—Amended

In our proposed rule dated August 6, 2008 (73 FR 45805), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the President's memorandum of April 29, 1994, and ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning E.O. 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy, Supply, Distribution, and Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under E.O. 12866. The 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 (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for *Cirsium loncholepis* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Cirsium loncholepis*. Federal agencies also must consult with us if their activities may affect critical habitat.

In the DEA of the proposed revised designation of critical habitat, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revised designation of critical habitat. The DEA identified the estimated incremental impacts associated with the proposed revised designation of critical habitat as described in sections 2 through 9, and evaluated the potential for economic impacts related to activity categories including military-related activities on VAFB, residential and commercial development, agriculture and ranching, recreation, oil and gas operations, and public lands management. The DEA concluded that the incremental impacts resulting from this rulemaking that may be borne by small businesses will be associated with agriculture and ranching, and recreation. Incremental impacts are either not expected for the other types of activities considered or, if expected, will not be borne by small entities.

As discussed in Appendix A of the DEA, the potential impacts of the proposed revised designation of critical habitat on agriculture and ranching over the next 20 years would result from unquantified delay costs associated with future construction of up to four cooling facilities or processing plants in Unit 2; and future vineyard conversion projects in Unit 3. The delay costs associated

with future construction of cooling facilities or processing plants will potentially affect fewer than one small agricultural entity per year. The delay costs associated with future vineyard conversion projects will affect one small entity (one landowner).

As discussed in Appendix A of the DEA, impacts on small businesses associated with recreation are provided through two scenarios; the lower bound assumes that no restrictions are placed on off-highway vehicle (OHV) recreation at Oceano Dunes State Vehicle Recreation Area (ODSVRA), and the upper bound assumes that five percent of critical habitat within ODSVRA is closed to OHV recreation, and that some people who would have made a trip to ODSVRA for OHV recreation will forego future trips due to the closure of five percent of the riding area. Since there are no impacts to small businesses with the lower bound scenario, only costs for the upper bound scenario are given. In this case, the DEA identifies estimated lost opportunity costs associated with OHV recreation at ODSVRA over the next 20 years (2009 to 2028) at $55.2 million in present value terms using a 3 percent discount rate, and $39.3 million in present value terms using a 7 percent discount rate. The costs would be borne by businesses in the region surrounding the ODSVRA that provide lodging, food and beverage, retail shopping, and vehicle-related services to OHV users, and is based on the assumption in the DEA that OHV use would decline if portions of the ODSVRA are closed to OHV use due to critical habitat. The DEA assumes that an average of 85 percent of the businesses that supply goods and services to OHV users are small businesses.

In summary, we have considered whether the proposed revised designation of critical habitat would result in a significant economic impact on a substantial number of small entities. We have identified small businesses that may be affected within the ranching and agriculture and recreation sectors. However, for the construction of cooling facilities/processing plants, less than one small entity per year may be affected; and for vineyard conversion, only one small entity may be affected by the proposed revised designation of critical habitat. Within the recreation sector, the DEA identifies a large percentage of small businesses that may be impacted by the proposed revised designation of critical habitat. Although this action has a potential to impact small businesses that provide goods and services to OHV users, we believe that the ODSVRA can incorporate measures to ensure the long-term conservation of *Cirsium loncholepis* in proposed critical habitat Unit 1 without closing large areas that are currently open to OHV users. Therefore, it is likely that these small businesses will not bear the majority of the estimated impacts, which are associated with lost opportunity costs stemming from reduced OHV use of ODSVRA. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised designation of critical habitat for *C. loncholepis* would not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. As discussed in Appendix A, the DEA finds that none of these criteria are relevant to this analysis. The DEA identifies that the most likely energy-related activity to occur is the re-activation of an existing well, which generally will not result in incremental impacts; therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

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. ''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.''

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

b. As discussed in the DEA of the proposed designation of critical habitat for *Cirsium loncholepis,* we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The DEA concludes incremental impacts may occur due to project modifications that may need to be made for agriculture and development activities; however, these are not expected to affect small governments. Consequently, we do not believe that the revised critical habitat designation would significantly or

uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

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 proposing revised critical habitat for *Cirsium loncholepis* 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. In conclusion, the proposed revision to critical habitat for *C. loncholepis* does not pose significant takings implications.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this rulemaking are the staff members of the Ventura Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: February 20, 2009.

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9–4788 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 45

Tuesday, March 10, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 5, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System; Goat 2009 Study.

OMB Control Number: 0579–NEW.

Summary of Collection: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) authorizes the Animal and Plant Health Inspection Service (APHIS) to prevent the introduction and interstate spread of livestock diseases by prohibiting or restricting the importation and interstate movement of animals and other articles and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases and associated risk factors. APHIS plans to conduct the Goat 2009 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population.

Need and Use of the Information: The purpose of the study is to collect information through questionnaires and biologic sampling. APHIS will use the data collected to: (1) Establish national and regional production measures for producers, veterinary, and industry reference; (2) predict or detect national and regional trends in disease emergence and movement; (3) address emerging issues; (4) examine the economic impact of health management practices; (5) provide estimates of both outcome (disease or other parameters) and exposure (risks and components) variables that can be used in analytic studies in the future by APHIS; (6) provide input into the design of surveillance systems for specific diseases; and (7) provide parameters for animal disease spread models. Without this data, the U.S.' ability to detect trends in management, production, and health status, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,349.

Animal and Plant Health Inspection Service

Title: Johne's Disease in Domestic Animals; Interstate Movement, 9 CFR 80.

OMB Control Number: 0579–0148.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Johne's disease affects cattle, sheep, goats, and other ruminants. It is an incurable and contagious disease that results in progressive wasting and eventual death. The disease is nearly always introduced into a healthy herd by an infected animal that is not showing symptoms of the disease. Moving John's, positive livestock interstate for slaughter or for other purposes and doing so without increasing the risk of disease spread requires the use of an owner-shipper statement and official eartags in this program.

Need and Use of the Information: APHIS will collect information that includes: (1) The number of animals to be moved, (2) the species of the animals, (3) the point of origin and destination, and (4) the consignor and consignee. Without the information APHIS would be unable to ensure that Johne's disease is not spread to healthy animal populations throughout the United States.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 275.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 102.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–5053 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 5, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for

review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Farm Service Agency

Title: End-Use Certificate Program.

OMB Control Number: 0560–0151.

Summary of Collection: Public Law 103–181, Section 321(f) of the North American Free Trade Agreement Implementation Act mandates that the Secretary of Agriculture shall implement, in coordination with the Commissioner of Customs and Border Protections, a program requiring that end-use certificates be included in the documentation covering the entry into the United States of any wheat originating from Canada. The end-use certificate program was designed to ensure that Canadian wheat does not benefit from USDA or CCC-assisted export programs.

Need and Use of the Information: The form FSA–750 ''End-Use Certificate for Wheat'' is used by importers of Canadian wheat to report entry into the United States. The form must be submitted by the importer within 15 workdays following the date of entry. Millers, exporters, and other users of imported Canadian wheat use the FSA–751, ''Wheat Consumption and Resale Report,'' to report final disposition of Canadian wheat in the United States. Failure to collect the information on an entry-by-entry basis would make it impossible to ensure that imported grain retains its identify preserved status and doe not benefit from USDA or CCC-assisted programs.

Description of Respondents: Business or other for-profit.

Number of Respondents: 421.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 4,520.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–5055 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 5, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Food and Nutrition Service

Title: 7 CFR Part 215—Special Milk Program for Children.

OMB Control Number: 0584–0005.

Summary of Collection: Section 3 of the Child Nutrition Act (CNA) of 1966 (Pub. L. 89–642, as amended; 42 U.S.C. 1772) authorizes the Special Milk Program (SMP) for Children. It provides for appropriation of such sums as may be necessary to enable the Secretary of Agriculture under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grades and under, and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CAN or the National School Lunch Act.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to compute the amount of Federal SMP funds due the SA under the performance-funding formula; analyze and evaluate the results of program operation within each state and nationwide; respond to data requests from the Congress, OMB, and advocacy groups and the general public; develop budget projections of the amount of Federal funds needed to pay SMP program benefits; and regulate the flow of Federal funds to SA. Without this information FNS would not be able to evaluate program operations.

Description of Respondents: State, Local, and Tribal Government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 11,430.

Frequency of Responses: Recordkeeping; Reporting: Monthly.

Total Burden Hours: 566,428.

Food and Nutrition Service

Title: Civil Rights Title VI—Collection Reports—FNS–191 and FNS–101.

OMB Control Number: 0584–0025.

Summary of Collection: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving Federal financial assistance. The Department of Justice regulations, cited at Title 28 of the Code of Federal Regulations (CFR), Section 42.106(b), require all Federal Departments to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI. In order to comply with the Civil Rights Act, Department of Justice regulations and the Department's nondiscrimination policy and regulations (7 CFR Part 15), the Department's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of persons receiving benefits from FNS food assistance programs. FNS will collect information using forms FNS 191 and FNS 101.

Need and Use of the Information: FNS will collect the names, addresses, telephone numbers to compile a local agency directory which serves as the primary source of data on number and location for local agencies and number of sites operating Commodity Supplemental Food Program (CSFP). FNS will also collect information on the number of CFSP individuals (women, infant, children, and elderly) in each racial/ethnic category for one month of the year. The information will be used in the Department's annual USDA Equal Opportunity Report. If the information is not collected FNS could not track racial/ethnic data for program evaluation.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 2,863.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,726.

Food and Nutrition Service

Title: National Survey of WIC Participants II.

OMB Control Number: 0584–0484.

Summary of Collection: The Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300) requires the Food and Nutrition Service (FNS), USDA, to provide estimates of erroneous payments in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and to identify and report corrective actions the agency is taking to reduce them. These measures are necessary in order to enhance the accuracy and integrity of Federal payments in the WIC Program.

Need and Use of the Information: FNS will use the information to identify the amount and source of error and to develop corrective measures to be taken to reduce the amount of error. If the information is not collected, no assessment of the amount and type of errors can be made nor can corrective actions be developed and implemented.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 5,093.

Frequency of Responses: Report: Other (One time).

Total Burden Hours: 3,361.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–5056 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Specialty Crop Committee's Stakeholder Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of stakeholder listening session.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a stakeholder listening session of the Specialty Crop Committee, under the auspices of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The Specialty Crop Committee will hold the stakeholder listening session on March 13, 2009 from 9 a.m.–3 p.m.

ADDRESSES: The stakeholder listening session of the Specialty Crop Committee will take place at the headquarters of the Florida Fruit and Vegetable Growers Association, 800 Trafalgar Court, Suite 200, Maitland, FL 32751.

The public may file written comments before or up to two weeks after the listening session with the contact person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, U.S. Department of Agriculture, Room 344–A, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Bruce Mertz, Acting Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; *telephone:* (202) 720–3684; *fax:* (202) 720–6199; or *e-mail: bmertz@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: The Specialty Crop Committee was established in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465, as amended under the Food, Conservation, and Energy Act of 2008, under Title VII, Section 7103 of Public Law 110–246. This Committee is a permanent committee of the National Agricultural Research Extension, Education, and Economics Advisory Board (the Board). The Committee's charge is to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The congressional legislation defines ''specialty crops'' as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). In order to carry out its responsibilities effectively, the Committee is holding a stakeholder listening session. The listening session will elicit stakeholder input from industry and state representatives, national organizations and institutions, local producers, and other groups about topics of relevance to research, extension or economics programs on which the Specialty Crop Committee is charged to report through the Board to the Secretary of Agriculture and Congress. Several panel sessions will be organized to stimulate discussion, each relating to one or more specific issues delineated in the Committee's charge. Each panel will be followed with questions by Committee members and opportunity for brief presentations and general discussion from the floor. Also, written comments by attendees and other interested stakeholders will be welcomed as additional public input before and up to two weeks following the listening sessions. All statements will become part of the official public record of the Board's Specialty Crop Committee.

Done at Washington, DC this 12th day of February 2009.

Katherine Smith,

Acting Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. E9–4983 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0139]

Notice of Request for Approval of an Information Collection; APHIS Ag-Discovery Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with the Ag-Discovery Program.

DATES: We will consider all comments that we receive on or before May 11, 2009.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0139* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0139, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0139.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the APHIS Ag-Discovery Program, contact Mr. Ken Johnson, Special Programs Consultant, CREC, APHIS, 4700 River Road Unit 92, Riverdale, MD 20737; (301) 734–5353. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: APHIS Ag-Discovery Program.

OMB Number: 0579–xxxx.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service established ''Ag-Discovery,'' a nationwide outreach program, to help students learn about careers in agriculture. The 2–3 week summer boarding program targets students 12–17 years old who are interested in learning more about agricultural science. To date, the APHIS Ag-Discovery program is hosted on six university campuses and is designed to create awareness about agriculture, the mission of APHIS, and careers in APHIS programs. Students learn about agricultural science from university professors, plant and animal health professionals, and wildlife biologists and participate in a variety of activities, such as hands-on labs, workshops, and field trips.

The Ag-Discovery outreach program requires the use of information collection activities, including a student application, essays, and letters of reference.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Full-time students (12–17 years of age).

Estimated Annual Number of Respondents: 210.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Annual Number of Responses: 630.

Estimated Total Annual Burden on Respondents: 3,780 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 4th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5033 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0001]

Notice of Request for Extension of Approval of an Information Collection; National Animal Health Reporting System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection to support the National Animal Health Reporting System.

DATES: We will consider all comments that we receive on or before May 11, 2009.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0001* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0001, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your

comment refers to Docket No. APHIS–2009–0001.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the National Animal Health Reporting System, contact Ms. Sandra Warnken, Program and Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7193 For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Reporting System.

OMB Number: 0579–0299.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and other articles to prevent the introduction and interstate spread of livestock diseases and to eradicate such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Reporting System (NAHRS), which collects, on a national basis, data monthly from State veterinarians on the presence or absence of diseases of interest to the World Organization for Animal Health (OIE).

As a member country of OIE, the United States must submit reports to the OIE on the status of certain diseases in specific livestock, poultry, and aquaculture species. Reportable diseases are diseases that have the potential for rapid spread, irrespective of national borders, that are of serious socio-economic or public health consequence, and that are of major importance in the international trade of animals and animal products. The potential benefits to trade of accurate reporting on the health status of the U.S. commercial livestock, poultry, and aquaculture industries, include expansion of those industries into new export markets, and preservation of existing markets through increased confidence in quality and disease freedom. This data collection is unique in terms of the type, quantity, and frequency; no other entity is collecting and reporting data to the OIE on the health status of U.S. livestock, poultry, and aquaculture.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: State veterinarians.

Estimated Annual Number of Respondents: 50.

Estimated Annual Number of Responses per Respondent: 12.

Estimated Annual Number of Responses: 600.

Estimated Total Annual Burden on Respondents: 2,400 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 4th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5030 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0137]

Notice of Request for Approval of an Information Collection; Plant Protection and Quarantine; Official Control Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with Federal recognition of a State's plant pest control or eradication program as an official control program.

DATES: We will consider all comments that we receive on or before May 11, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008–0137* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0137, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0137.

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

Other Information: Additional information about APHIS and its

programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the Official Control Program, contact Ms. Diane L. Schuble, National Coordinator for Official Control Programs, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 734–8723. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Plant Protection and Quarantine; Official Control Program.

OMB Number: 0579–XXXX.

Type of Request: Approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

As part of this mission, APHIS' Plant Protection and Quarantine (PPQ) program responds to introductions of plant pests to eradicate, suppress, or contain them through various programs to prevent the interstate spread of plant pests. APHIS' plant pest control and eradication programs qualify as ''official control programs,'' as defined by the International Plant Protection Convention (IPPC), recognized by the World Trade Organization as the standard-setting body for international plant quarantine issues. ''Official control'' is defined as ''the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests.'' As a contracting party to the IPPC, the United States has agreed to observe IPPC principles as they relate to international trade.

APHIS is aware that individual States enforce phytosanitary regulations and procedures within their borders to address pests of concern, and that those pests are not always also the subject of an APHIS response program or activity. To strengthen APHIS' safeguarding system to protect agriculture and to facilitate agriculture trade through effective management of phytosanitary measures, APHIS plans to begin a process to allow a State to request Federal recognition of that State's phytosanitary measures or activities as an ''official control program'' to restrict the spread of plant pests. Federal recognition of a State's pest control activities will justify actions by Federal inspectors at ports of entry to help exclude pests under an official control program in a destination State. This process involves the use of information collection activities, including the submission by States of a protocol for quarantine pests of concern and a protocol for regulated non-quarantine pests.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 80 hours per response.

Respondents: State plant health regulatory officials.

Estimated annual number of respondents: 53.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 1,325.

Estimated total annual burden on respondents: 106,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 4th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5034 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0143]

Availability of an Environmental Assessment for a Biological Control Agent for Russian Thistle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of Russian thistle, *Salsola tragus*. The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous blister mite, *Aceria salsolae*, for the biological control of Russian thistle in the continental United States. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 9, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0143* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0143, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0143.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA

South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Carmen Soileau, Senior Entomolgist, Evaluation and Permitting of Regulated Organisms and Soil, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1237; (301) 734–5055.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for release of a nonindigenous blister mite, *Aceria salsolae*, for the biological control of Russian thistle, *Salsola tragus*, in the continental United States.

Russian thistle or tumbleweed, is a highly invasive weed native to the mountainous regions of southwest Asia. Since the introduction of Russian thistle to South Dakota in the early 1870s, it has spread steadily throughout the central and western regions of the United States and southern Canada. It is an agricultural pest that grows primarily in fallow or disturbed soil, along roadsides and irrigation canals, and in waste areas in arid and semiarid zones. During drought periods, it can invade some habitats and displace native species. The infestation of Russian thistle causes millions of dollars of damage by disrupting automobile traffic, clogging irrigation canals, piling up against fences and houses, and igniting and spreading wildfires.

There are currently several control methods for Russian thistle, including herbicides, timed grazing, tilling, and other methods. However, these approaches have proven to be ineffective. Therefore, APHIS is proposing to issue permits for the release of a blister mite, *Aceria salsolae*, into the environment for use as a biological control agent to reduce the severity of Russian thistle infestations in the continental United States.

The proposed biological control agent, *A. salsolae*, is a mite in the insect family Eriophyid and can be found in Turkey, Uzbekistan, and Greece. The mites are usually hidden in crevices of the leaf axils, flowers, and fruits of the Russian thistle. They feed on the target plant by inserting stylets (needle-like mouth parts) into plant cells and feeding on the cell contents. After about 3 weeks, the leaf meristems (growing tips) die and the mites use the wind to disperse to fresh meristems. Feeding on epidermal cells in meristematic tissue causes cell death of the leaf and flower meristems, thus stunting growth of the plant and delaying and reducing reproduction.

The mite is not expected to directly harm any plants outside the targeted Russian thistle (*sensu lato*). Host specific tests of *A. salsolae* were conducted using a total of 39 species and 12 varieties of host plants from 5 families, including 25 native species of North America. After 4 weeks of laboratory experiments, no live mites were found on any of the nontarget test plants outside the genus *Salsola* and none of the nontarget plants showed any sign of feeding damage. Furthermore, the results clearly show that there was no population increase on these nontarget plant species, particularly in comparison to the population growth observed on Russian thistle.

APHIS' review and analysis of the potential environmental impacts associated with releasing a biological control agent, *A. salsolae*, into the environment are documented in detail in an environmental assessment (EA) entitled ''Field Release of *Aceria salsolaea* (Acari: Eriophyidae), a Mite for Biological Control of Russian Thistle (*Salsola tragus*), in the Continental United States'' (October 2008). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 4th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5043 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0142]

Availability of an Environmental Assessment for a Biological Control Agent for Yellow Starthistle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of yellow starthistle, *Centaurea solstitialis* (Asteraceae). The environmental assessment considers the effects of, and alternatives to, the release of a weevil, *Ceratapion basicorne,* into the environment for use as a biological control agent to reduce the severity of yellow starthistle infestations in the continental United States. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 9, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008–0142* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0142, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0142.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW.,

Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Carmen Soileau, Senior Entomolgist, Evaluation and Permitting of Regulated Organisms and Soil, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–5055.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for release of a weevil, *Ceratapion basicorne,* into the environment for use as a biological control agent to reduce the severity of yellow starthistle infestations in the continental United States.

Yellow starthistle is a highly invasive weed that has become one of California's worst pests since its introduction prior to 1860. Since then, it has been reported in 41 of the 48 contiguous U.S. States, with the heaviest infestations in the States of California, Idaho, Oregon, and Washington. Yellow starthistle infests grassland habitats and displaces desirable plants in both natural and grazing areas. Its flowers have inch-long spines that deter feeding by and cause injury to grazing animals and lower the utility of recreational lands. Although consumption of yellow starthistle by grazing animals is rare, consumption by horses is toxic. Continued feeding causes ulcers in the mouth and results in brain lesions that cause a fatal syndrome known as ''chewing disease'' or nigropallidal encephalomalacia.

There are currently several control methods for yellow starthistle, including herbicides, mowing, timed grazing, prescribed burns, and other methods. However, these control methods have proven to be ineffective. Therefore, APHIS is proposing to issue permits for the release of a weevil, *Ceratapion basicorne,* into the environment for use as a biological control agent to reduce the severity of yellow starthistle infestations in the continental United States.

The proposed biological control agent, *C. basicorne,* is native to Europe and southwestern Asia. The weevil has a wide tolerance to climate and is therefore expected to become established throughout the range of yellow starthistle if released in the United States. Female *C. basicorne* lay their eggs in the yellow starthistle leaves from late March to early May. The eggs hatch after approximately 10 days. The larvae then mine in the leaf blade and down the leaf stalk. During the following 2 months, the larvae feed in the root crown while they develop. Adults emerge in June, feed on the yellow starthistle leaves for a few days, and then disappear. Field impact studies in California show that plants infested with *C. basicorne* have slower growth rates and decreased seed production compared to uninfested plants.

Host specificity tests indicate that no plant species outside the subtribe Centaureinae are at risk of larval damage. The closest native species to yellow starthistle are *C. americana* and *C. rothrockii,* but they were not able to maintain larval development of *C. basicorne.* Test results also indicate that there may be low attack and larval damage to *C. melitensis, Crupino vulgaris, Cnicus benedictus,* and *C. cyanus,* but risk of attack was not measured in specificity experiments because there is no interest to protect these invasive species in North America. Based on these results, release of *C. basicorne* in the continental United States is not expected to have any negative cumulative impacts.

APHIS' review and analysis of the potential environmental impacts associated with the proposed action are documented in detail in an environmental assessment (EA) entitled ''Field Release of *Ceratapion basicorne* (Coleotera: Apionidae), a Weevil for Biological Control of Yellow Starthistle (*Centaurea solstitialis*), in the Continental United States'' (October 2008). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 4th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5052 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cooperative Conservation Partnership Initiative

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals; request for public comment.

SUMMARY: Section 2707 of the Food, Conservation, and Energy Act of 2008 (2008 Act) establishes the Cooperative Conservation Partnership Initiative (CCPI) by amending Section 1243 of the Food Security Act of 1985 [16 U.S.C. 3843]. The Secretary of Agriculture has delegated the authority for CCPI to the Chief of the Natural Resources Conservation Service (NRCS), who is a Vice President of the Commodity Credit Corporation (CCC). NRCS is an agency of the United States Department of Agriculture (USDA). Congress established CCPI to assist potential partners with focusing conservation assistance in defined project areas to achieve high-priority natural resource objectives. In fiscal year (FY) 2009, NRCS will make Environmental Quality Incentives Program (EQIP) and Wildlife Habitat Incentive Program (WHIP) funds available to owners and operators of agricultural and nonindustrial private forest lands who will participate in CCPI projects.

The purpose of this notice is to inform potential partners and producers that include nonindustrial private forest landowners of the availability of CCPI funds and other assistance and to solicit proposals from potential partners who seek to enter into partnership agreements with NRCS to enhance conservation outcomes on agricultural and nonindustrial private forest land.

Additionally, NRCS requests public comment on how CCPI can contribute to the Nation's efforts on energy, climate change, and carbon sequestration within the framework of the Initiative.

DATES: Proposals must be received in the NRCS State office or National office (where the project areas are multi-State or national) within 45 days of the date of this notice. Comments must be received within 30 days of the date of this notice.

Addresses for Submitting Proposals: Written proposals should be sent to the appropriate State Conservationist, Natural Resources Conservation Service. The telephone numbers and addresses of the NRCS State Conservationists are attached in the appendix of this notice. For multi-State proposals, written proposals should be sent to the Chief, Attention: Director, Financial Assistance Programs Division, Room 5241 South Building (Subject: CCPI Proposals), PO Box 2890, Washington, DC 20013. If the project is multi-state in scope, all State Conservationists in the project area must be sent the proposal for review. State Conservationist(s) must submit letters to NRCS National Headquarters by May 8, 2009. A list of NRCS State office addresses and phone numbers is included at the end of the notice. Potential partners are encouraged to consult with the appropriate State Conservationist(s) during proposal development to discuss the letter of review.

Addresses for Submitting Comments: You may send comments which will be available to the public in their entirety, using any of the following methods:

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

Mail: Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building (Subject: CCPI Comments), Washington, DC 20250–2890; *Fax:* (202) 720–4265. Hand *Delivery Room:* Room 5241 South Building, 1400 Independence Avenue, SW., Room 5237, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

This notice may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/* ; select the *Farm Bill* link from the menu; select the *Notices* link from beneath the **Federal Register** Notices Index title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

To view public comments, please ask the guard at the entrance to the South Building to call (202) 720–4527 to be escorted into the building.

FOR FURTHER INFORMATION CONTACT: Director, Financial Assistance Programs Division, NRCS; *phone:* (202) 720–1845; *fax:* (202) 720–4265; or *e-mail: CCPI2008@wdc.usda.gov;* Subject: CCPI; or via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/;* select the *Farm Bill* link from the menu; select the *Notices* link from beneath the **Federal Register** *Notices Index* title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Availability of Funding

Effective on the publication date of this notice, the CCC announces the availability until September 30, 2009, of up to $52.4 million of financial assistance funds for CCPI. Under CCPI, the NRCS State Conservationist or Chief enters into multi-year agreements with State and local governments, federally recognized Indian tribes, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers. The Chief has designated $5.8 million of financial assistance funds for multi-State or national projects. Partnership agreement selection for National and State projects will be based on the criteria established in this notice.

Definitions

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Beginning Farmer or Rancher means a person or legal entity who:

(a) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(b) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(c) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, USDA.

Conservation practice means one or more conservation improvements and activities including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes that are planned and installed in accordance with NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any participant accepted to participate in EQIP. A contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.

Cost-share agreement means a legal document that specifies the rights and obligations of any participant accepted into WHIP. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation.

Environmental Quality Incentives Program (EQIP) means a program administered by NRCS in accordance with 7 CFR part 1466, which provides for the installation and implementation of conservation practices on agricultural and nonindustrial private forest land.

Field Office Technical Guide means the official local NRCS source of resource information and interpretation of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in

Section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan must comply with Federal, State, tribal, and local laws, regulations, and permit requirements.

Indian land means: (1) Land held in trust by the United States for individual Indians or Indian tribes, or (2) land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or (3) land which is subject to rights of use, occupancy, and/or benefit of certain Indian tribes, or (4) land held in fee title by an Indian, Indian family, or Indian tribe.

Indian tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Limited Resource Farmer or Rancher means:

(a) A person with direct or indirect gross farm sales not more than $155,200 in each of the previous 2 years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(b) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Partner means an entity that enters into a partnership agreement with NRCS to carry out the CCPI activities. Eligible partners include federally recognized Indian Tribes, State and local units of government, producer associations, farmer cooperatives, and institutions of higher education or nongovernmental organizations with a history of working cooperatively with producers.

Participant means a person or legal entity, joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of a contract or cost-share agreement under a program covered by CCPI.

Partnership agreement means a multi-year agreement between NRCS and the partner.

Payment means financial assistance provided to a participant in accordance with a program contract or cost-share agreement. Payments and payment rates are guided by the existing program rules.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to 7 CFR part 1400, or who is engaged in agricultural production or forestry management.

Resource Concern means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementation of conservation activities by producers.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee who is authorized to implement conservation programs, administered by NRCS, and who directs and supervises NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following: (1) Technical services provided directly to farmers, ranchers, and other eligible entities such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and (2) technical infrastructure including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants, in lieu of or on behalf of NRCS.

Wildlife Habitat Incentive Program (WHIP) means a program administered by NRCS in accordance with 7 CFR 636, which provides for technical and financial assistance to protect, restore, develop, and enhance wildlife habitat.

Overview of the Cooperative Conservation Partnership Initiative

Background

The CCPI is a voluntary conservation initiative that establishes specific parameters for working with eligible partners to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands. The assistance provided enables participants to install and maintain conservation practices, including the development and adoption of innovative conservation practices and management approaches.

CCPI uses the funds, policies, and processes of EQIP and WHIP to deliver flexible conservation assistance to owners and operators of agricultural and nonindustrial private forest land. Under CCPI, NRCS enters into partnership agreements with eligible entities that want to enhance conservation outcomes on agricultural and nonindustrial private forest land. The intent of CCPI is for the Federal government to leverage investment in natural resources conservation and enhancement from non-Federal sources and to coordinate Federal efforts with other Federal, State, tribal, and local efforts. The purposes of a CCPI partnership agreement are to: (1) Address conservation priorities involving agriculture and nonindustrial private forest land on a local, State, multi-State, or regional level; (2) to encourage producers to cooperate in meeting applicable Federal, State, and local regulatory requirements related to production; (3) to encourage producers to cooperate in the installation and maintenance of conservation practices that affect multiple agricultural or nonindustrial private forest land; and (4) to promote the development and demonstration of innovative conservation practices and delivery methods, including those for specialty crop and organic production and precision agriculture producers.

Partners who may enter into partnership agreements with NRCS include federally recognized Indian Tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Potential partners may submit proposals that request assistance for a specified project area which may

be defined by geo-political boundaries, watershed boundaries, or resource concern. The proposal must describe the area to be covered by the project, conservation priorities in the area, conservation objectives to be achieved, the number of producers, including nonindustrial private forest landowners, which are likely to participate; a description of the partner, or partners, collaborating to achieve the objectives of the agreement, and the roles, responsibilities, and capabilities of the partners; a description of the resources that are requested from the Secretary and the contributions of the partners; a description of the plan for monitoring, evaluating, and reporting on progress made towards achieving the objectives of the agreement; and other information that may be required by the Secretary.

Once a partnership proposal is selected, eligible individuals wishing to participate in the project must apply directly to NRCS for funding. Individual applications will be evaluated to ensure that applications selected for funding are most aligned with the project objective. All Federal funds made available through this CCPI request for proposals (RFP) will be provided directly to eligible participants through EQIP contracts and WHIP cost-share agreements. Producers interested in applying must meet the eligibility requirements of the program for which they are applying.

In FY 2009, the aim of CCPI is to deliver EQIP and WHIP assistance to achieve high-priority conservation objectives in geographic areas defined by the partner. Where flexibility is needed to meet project objectives, program adjustments may be made provided such adjustments are within the scope of the applicable programs' statutory and regulatory program authorities. An example of a program adjustment may be bypassing the applicable program ranking process in a situation where a partner has identified the producers approved to participate in the project. Other examples of program adjustments may include flexibility in payment levels, or using a single area-wide plan of operations rather than individual plans of operations.

Submitting Proposals

Prospective partners submit complete proposals to the appropriate State Conservationist (State Initiatives) or the Chief (if the project is multi-State or national). All proposals must be submitted to the appropriate State Conservationist or Chief (Attn: Director, Financial Assistance Programs Division) within 45 days of the date of this notice. If a project is multi-state in scope, all State Conservationists in the project area must be sent the proposal for review. State Conservationist(s) must submit letters to the NRCS National Headquarters by May 8, 2009. A list of NRCS State office addresses and phone numbers is included at the end of the notice. Potential partners are encouraged to consult with the appropriate State Conservationist(s) during proposal development to discuss the letter of review. No agency form is provided; rather, applicants must provide a narrative proposal following the requirements set forth in this notice.

The Chief or State Conservationist will review and evaluate the proposals based on the criteria set forth in this notice. Incomplete proposals will not be considered and will be returned to the submitting entity. Positive consideration will be given to proposals that provide for outreach to beginning, socially disadvantaged, and limited resource farmers or ranchers within the area covered by the project. Positive consideration will also be given to proposals that both achieve program purposes and further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration. An example of this type of activity may be planting trees along riparian corridors, which not only enhances wildlife habitat and controls erosion, but also sequesters carbon. Once a proposal is selected, NRCS will enter into contracts or cost-share agreements, depending on the applicable program, with eligible participants to install and perform conservation practices and/or enhancements to meet objectives described in the project proposal.

Producers interested in participating in CCPI may apply for designated CCPI funds at their local United States Department of Agriculture (USDA) service center. The designated conservationist will determine the applicable program (EQIP and WHIP) requirements depending on the practices and/or activities which the applicant seeks to install or perform. For example, a State Conservationist will enter into an EQIP contract with an applicant who seeks to apply an agricultural waste management facility, while an applicant who wishes to apply a conservation practice that enhances habitat for at-risk or declining species enters into a WHIP cost-share agreement.

Producers seeking to participate in a CCPI project must meet all program-specific eligibility requirements. The requirements that apply to the contract or cost-share agreement are determined by the program selected, as adjusted by any approved flexibility. For information on the limitations and benefits, including appropriate payment limitations which apply to land and participants enrolled in EQIP and WHIP, please consult the appropriate programs' statutory authority and regulations: Environmental Quality Incentives Program (U.S.C. 3836a, 7 CFR 1466) and Wildlife Habitat Incentive Program (16 U.S.C. 3839bb–1, 7 CFR 636). You may also visit the NRCS Web site at *www.nrcs.usda.gov* for additional information by selecting the ''Programs'' tab.

Partner and Land Eligibility

Entities eligible to participate as partners include federally recognized Indian Tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, or nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land.

The following land is eligible for enrollment in the CCPI:

- Private agricultural and nonindustrial private forest land,
- Land meeting the covered programs (EQIP and WHIP) eligibility rules. Eligible land is defined for each program in regulation:
  - EQIP: 7 CFR 1466.8(c)
  - WHIP: 7 CFR 636.4

Proposal Criteria

To be eligible for selection, prospective partners must submit a complete proposal to the Chief or the appropriate State Conservationist. The proposal must contain the information set forth below in order to receive consideration:

(a) A description of the partner(s) history of working with producers to address the conservation objectives to be achieved;

(b) A description of the geographic area covered by the proposal, conservation priorities in the area, conservation objectives to be achieved, and the expected level of participation by producers;

(c) A description of the partner(s) collaborating to achieve the objectives of the agreement and the roles, responsibilities, and capabilities of the partner(s);

(d) A description of the project duration, not to exceed 5 years in length, and schedule that details when the potential partner anticipates

finishing the project and submitting a final report;

(e) A description of the resources that are requested from the Secretary, and the non-Federal resources that will be leveraged by the Federal contribution;

(f) A description of the plan for monitoring, evaluating, and reporting on progress made towards achieving the objectives of the agreement;

(g) A list of the criteria to be used to prioritize individual producer applications to ensure that applications most aligned with the proposal's objectives receive priority;

(h) An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that are likely to participate in the project;

(i) A description of the conservation practices and activities to be applied on the landscape within the project timeframe;

(j) An estimate of the financial assistance program funds and acres needed to implement the conservation practices and activities within the project area (for multi-State or national projects, provide the funds/acres by State);

(k) A description of any requested program adjustments, by program, with explanation of why the adjustment is needed in order to achieve the objectives of the project. If a partner is requesting specific program flexibilities that depend on detailed participant or project information, the proposal must provide the needed information. Partners should contact their local NRCS office to determine the specific information required;

(l) A description of how the partner will provide for outreach to beginning, limited resource, and small and disadvantaged farmers and ranchers and Indian Tribes; and

(m) A description of how the proposal's objectives further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration, if applicable.

Ranking Considerations

Once the Chief or appropriate State Conservationist has assessed the merits of each proposal, the Chief or appropriate State Conservationist will rank the proposals via a competitive process. The Chief or State Conservationist shall give a higher priority to proposals that:

- Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the area covered by the agreement;
- Complete the application of the conservation practices and/or activities on all of the covered program contracts or cost-share agreements in 5 years or less;
- Assist the participants in meeting local, State, and/or Federal regulatory requirements;
- Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts;
- Provide for matching technical assistance funds to assist participants with the implementation of their EQIP contracts and WHIP cost-share agreements;
- Deliver high percentages of applied conservation to address water quality, water conservation, or State, regional, or national conservation initiatives;
- Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods;
- Further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration; or
- Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian Tribes within the area covered by the agreement.

Partnership Agreements

NRCS will enter a partnership agreement with a selected partner as the mechanism for participation in CCPI. The partnership agreement will not obligate funds, but will address among other things:

- The role of the partner;
- The role of NRCS;
- The responsibilities of the partner as it relates to the monitoring and evaluation;
- The format and frequency of reports (semi-annual, annual, and final) that are required as a condition of the agreement;
- The frequency and duration of the monitoring and evaluation that will take place within the project area;
- Plan of Work and Budget to identify other funding sources (if applicable) for financial and/or technical assistance;
- The specified project timeframe; and
- Other requirements deemed necessary by NRCS to further the purposes of the CCPI project.

Once a proposal is selected and a partnership agreement is signed, and subject to the availability of funding, NRCS begins entering into EQIP contracts and/or WHIP cost-share agreements directly with producers that include nonindustrial private forest landowners who are participating in the project. The program used will depend upon the type of practices or activities anticipated to be applied. Participants may have multiple contracts through CCPI if more than one covered program is needed to accomplish the project objectives.

Request for Public Input

USDA furthers the Nation's ability to increase renewable energy production and conservation, mitigate the effects and adapt to climate change, and reduce net carbon and greenhouse gas (GHG) emissions through various assistance programs.

USDA is increasing renewable energy production through facilitating the availability, adoption, and use of wind, solar, and biofuel energy sources. USDA encourages renewable energy production by funding biofuel technology transfer under Conservation Innovation Grants and through facilitating wind and solar power generation facilities for on-farm use on conservation lands under the Conservation Reserve Program and the Grassland Reserve Program.

Energy conservation is improved through more efficient equipment and processes. EQIP fosters energy conservation on farms and ranches by promoting efficient water irrigation systems, no-till, and nutrient management and promoting renewable energy production by installing solar-generated electric fences.

The effects of climate change can be mitigated through improving the adaptability of ecosystems and flexibility of agricultural management systems including reductions in GHG emissions. WHIP improves ecosystem adaptability by enhancing wildlife habitat biodiversity and the Agricultural Management Assistance program promotes flexible management system through integrative pest management.

Climate change adaptation occurs through the adoption of alternative management systems which respond to changes such as decreasing precipitation, longer growing seasons, and increasing vulnerability to pest damage. USDA conservation programs, such as the Agricultural Water Enhancement Program, encourage the adoption of water conservation systems and dry land farming.

Net carbon emissions can be reduced by either reducing fossil fuel use or increasing the land's carbon storage

capacity. USDA conservation programs, such as EQIP, assist participants with reducing fossil fuel use through no-till and other conservation-tillage cropping systems which require fewer trips over a field with a tractor. The Wetlands Reserve Program and Healthy Forests Reserve Program sequester carbon by encouraging agricultural land reforestation. The Conservation Stewardship Program encourages conservation tillage activities that improve soil carbon storage.

While much is underway, USDA has adopted a proactive strategy to increase its ability to meet these critical national needs. Therefore, CCC is using this rulemaking opportunity to obtain input from the public on how CCPI can achieve its program purposes and further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or reducing net carbon emissions. For further information on these subjects, you may wish to look at the following Web site: *http://www.koshland-science-museum.org/exhibitgcc/*.

Signed in Washington, DC, on this date, March 5, 2009.

Dave White,

Acting Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

Alabama

William Puckett, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830, Phone: (334) 887–4535, Fax: (334) 887–4551, *bill.puckett@al.usda.gov*.

Alaska

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Arizona

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Arkansas

Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228, Phone: (501) 301–3100, Fax: (501) 301–3194, *kalven.trice@ar.usda.gov*.

California

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Caribbean Area

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Colorado

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Connecticut

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Delaware

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Florida

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Georgia

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Pacific Islands Area

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Idaho

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Illinois

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Indiana

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Iowa

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Kansas

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Kentucky

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Louisiana

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Maine

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Maryland

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Massachusetts

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Michigan

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Minnesota

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Mississippi

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Missouri

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Montana

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Nebraska

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Nevada

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New Hampshire

George W. Cleek IV, Federal Building, 2 Madbury Road, Durham, NH 03824–2043, Phone: (603) 868–9931, Ext. 125, Fax: (603) 868–5301, *george.cleek@nh.usda.gov*.

New Jersey

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New Mexico

Dennis Alexander, Suite 305, 6200 Jefferson Street, NE, Albuquerque, NM 87109–3734, Phone: (505) 761–4400, Fax: (505) 761–4481, *dennis.alexander@nm.usda.gov*.

New York

Astor Boozer, Suite 354, 441 South Salina Street, Syracuse, NY 13202–2450, Phone: (315) 477–6504, Fax: (315) 477–6560, *astor.boozer@ny.usda.gov*.

North Carolina

Mary K. Combs, 4407 Bland Road, Suite 117, Raleigh, NC 27609–6293, Phone: (919) 873–2101, Fax: (919) 873–2156, *mary.combs@nc.usda.gov*.

North Dakota

J.R. Flores, Jr., Federal Building Room 270, 220 E. Rosser Avenue, Bismarck, ND 58501–1458, Phone: (701) 530–2000, Fax: (701) 530–2110, *jr.flores@nd.usda.gov*.

Ohio

Terry Cosby, Room 522, 200 North High Street, Columbus, OH 43215–2478, Phone: (614) 255–2472, Fax: (614) 255–2548, *terry.cosby@oh.usda.gov*.

Oklahoma

Ronald L. Hilliard, 100 USDA, Suite 206, Stillwater, Oklahoma 74074–2655, Phone: (405) 742–1204, Fax: (405) 742–1126, *ron.hilliard@ok.usda.gov*.

Oregon

Ron Alvarado, 1201 NE Lloyd Blvd., Suite 900, Portland, OR 97232, Phone: (503) 414–3200, Fax: (503) 414–3103, *ron.alvarado@or.usda.gov*.

Pennsylvania

Craig Derickson, Suite 340, One Credit Union Place, Harrisburg, PA 17110–2993, Phone: (717) 237–2203, Fax: (717) 237–2238, *craig.derickson@pa.usda.gov*.

Rhode Island

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South Carolina

Niles Glasgow, Strom Thurmond Federal Building, Room 950, 1835 Assembly Street, Columbia, SC 29201–2489, Phone: (803) 253–3935, Fax: (803) 253–3670, *niles.glasgow@sc.usda.gov*.

South Dakota

Janet L. Oertly, 200 Fourth Street SW, Huron, SD 57350–2475, Phone: (605) 352–1200, Fax: (605) 352–1288, *janet.oertly@sd.usda.gov*.

Tennessee

J. Kevin Brown, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878, Phone: (615) 277–2531, Fax: (615) 277–2578, *kevin.brown@tn.usda.gov*.

Texas

Donald W. Gohmert, W.R. Poage Federal Building, 101 South Main Street, Temple, TX 76501–7602, Phone: (254) 742–9800, Fax: (254) 742–9819, *don.gohmert@tx.usda.gov*.

Utah

Sylvia Gillen, W.F. Bennett Federal Building, Room 4402, 125 South State Street, Salt Lake City, UT 84138–1100, Phone: (801) 524–4555, Fax: (801) 524–4403, *sylvia.gillen@ut.usda.gov*.

Vermont

Judith Doerner, Suite 105, 356 Mountain View Drive, Colchester, VT 05446, Phone: (802) 951–6795 ext. 228, Fax: (802) 951–6327, *judy.doerner@vt.usda.gov*.

Virginia

Jack Bricker, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014, Phone: (804) 287–1691, Fax: (804) 287–1737, *jack.bricker@va.usda.gov*.

Washington

Roylene Rides at the Door, Rock Pointe Tower II, Suite 450, W. 316 Boone Avenue, Spokane, WA 99201–2348, Phone: (509) 323–2900, Fax: (509) 323–2909, *roylene.rides-at-the-door@wa.usda.gov*.

West Virginia

Kevin Wickey, Room 301, 75 High Street, Morgantown, WV 26505, Phone: (304) 284–7540, Fax: (304) 284–4839, *kevin.wickey@wv.usda.gov*.

Wisconsin

Patricia S. Leavenworth, 8030 Excelsior Drive, Suite 200, Madison, WI 53717, Phone: (608) 662–4422, Fax: (608) 662–4430, *pat.leavenworth@wi.usda.gov*.

Wyoming

Xavier Montoya, P.O. Box 33124, Casper, WY 82602, Phone: (307) 233–6750, Fax: (307) 233–6753, *xavier.montoya@wy.usda.gov*.

[FR Doc. E9–5089 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny National Forest, PA; Reserved and Outstanding Oil and Gas Design Criteria

Correction

In notice document E9–3862 beginning on page 8899 in the issue of Friday, February 27, 2009, make the following correction:

On page 8899, in the last line of the first column, ''March 26, 2009'' should read ''March 30, 2009''.

[FR Doc. Z9–3862 Filed 3–9–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393).

DATES: The meeting will be held April 27–May 1, 2009, beginning at 1 p.m. on Monday, April 27 and ending at approximately 4 p.m. on Friday, May 1.

ADDRESSES: The meeting will be held at the MCM Elegante Hotel, 2020 Menaul, NE., Albuquerque, NM 87107, Tel. 505–884–2511. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us,* or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, or during the Panel meeting at the MCM Elegante Hotel, 2020 Menaul, NE., Albuquerque, NM 87107, Tel. 505–884–2511.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Alicia San Gil, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to

questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

March 3, 2009.

Faye L. Krueger,

Deputy Regional Forester.

[FR Doc. E9–4946 Filed 3–9–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 090227253–9254–01]

Solicitation of Applications for the FY 2009 EDA American Recovery Program Pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009)

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: Pursuant to the American Recovery and Reinvestment Act of 2009, EDA announces general policies and application procedures for grant-based investments for the EDA American Recovery Program under the auspices of the Public Works and Economic Development Act of 1965, as amended, that will promote comprehensive, entrepreneurial and innovation-based economic development efforts to enhance the competitiveness of regions, resulting in increased private investment and higher-skill, higher-wage jobs in regions that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring.

DATES: Applications are accepted on a continuing basis and processed as received. Applications may be submitted electronically in accordance with the instructions provided at *http://www.grants.gov* or mailed to the applicable EDA regional office listed below under ''Addresses and Telephone Numbers for EDA's Regional Offices.''

Application Submission Requirements: Applicants are advised to read carefully the instructions contained in section IV of the complete Federal funding opportunity (FFO) announcement for this request for applications. To access the FFO announcement, please see the Web sites listed below under ''Electronic Access.''

On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its new, streamlined *Application for Investment Assistance* (Form ED–900), which consolidates all EDA-specific requirements into a single application form. EDA will continue to require additional government-wide Federal grant assistance forms from the Standard Form (SF) 424 family and certain Department of Commerce (CD) forms as part of the application package. The specific SF forms required with the Form ED–900 depend on whether the applicant seeks construction or non-construction assistance.

Applicants seeking assistance for a project with construction components are required to complete and submit the following:

(i) Form ED–900 (*Application for Investment Assistance*);

(ii) Form SF–424 (*Application for Federal Assistance*);

(iii) Form SF–424C (*Budget Information—Construction Programs*);

(iv) Form SF–424D (*Assurances—Construction Programs*); and

(v) Form CD–511 (*Certification Regarding Lobbying*).

Applicants seeking assistance for a project without construction components are required to complete and submit the following forms:

(i) Form ED–900 (*Application for Investment Assistance*);

(ii) Form SF–424 (*Application for Federal Assistance*);

(iii) Form SF–424A (*Budget Information—Non-Construction Programs*);

(iv) Form SF–424B (*Assurances—Non-Construction Programs*); and

(v) Form CD–511 (*Certification Regarding Lobbying*).

Applicants for both construction and non-construction assistance may be required to submit to an individual background screening on the form titled *Applicant for Funding Assistance* (Form CD–346) and to provide certain lobbying information using the form titled *Disclosure of Lobbying Activities* (Form SF–LLL). The Form ED–900 provides detailed guidance to help the applicant assess whether Forms CD–346 and SF–LLL are required and how to access them.

Content and Form of the Form ED–900: The applicant is advised to read carefully the instructions contained in this notice, the complete FFO announcement, and all forms contained in the appropriate application package. It is the sole responsibility of the applicant to ensure that the appropriate application package is complete and received by EDA.

The Form ED–900 is divided into lettered sections that correspond to specific EDA program components that address all of EDA's statutory and regulatory requirements. Based on the program under which the applicant seeks assistance, the following table details the sections and exhibits in the Form ED–900 that the applicant must complete. Under this notice and request for applications, EDA will consider applications for funding under its Public Works and Economic Adjustment Assistance programs only. This table also is provided on the first page of Section A to Form ED–900.

EDA program	Required Form ED–900 sections
Public Works	Complete Sections A, B, and M and Exhibits A, D and E.
Economic Adjustment	Complete Sections A, B, and K and Exhibit C. Also complete Sections M and Exhibits A, D, and E if request has construction components, and Section N if the request has only design/engineering requirements. Complete Section E if the request has no construction components.
Revolving Loan Fund	Complete Sections A, B, E, K, and L and Exhibit C.
Design and Engineering	Complete Sections A, B, and N and Exhibit C.

Addresses and Telephone Numbers for EDA's Regional Offices: Applicants eligible for assistance under this notice may request paper (hardcopy) application packages by contacting the applicable EDA regional office servicing your geographic area listed below. Alternatively, applicants may obtain the application packages electronically at *http://www.grants.gov*. All components of the appropriate application package may be accessed and downloaded (in a screen-fillable format) at *http://www.grants.gov/applicants/apply_for_grants.jsp*.

Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308.

Telephone: (404) 730–3002, *Fax:* (404) 730–3025.

Serves: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

Economic Development Administration, Austin Regional Office, 504 Lavaca Street, Suite 1100, Austin, Texas 78701.

Telephone: (512) 381–8144, *Fax:* (512) 381–8177.

Serves: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606.

Telephone: (312) 353–7706, *Fax:* (312) 353–8575.

Serves: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin and Muscatine and Scott counties, Iowa.

Economic Development Administration, Denver Regional Office, 410 17th Street, Suite 250, Denver, Colorado 80202.

Telephone: (303) 844–4714, *Fax:* (303) 844–3968.

Serves: Colorado, Iowa (excluding Muscatine and Scott counties), Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106.

Telephone: (215) 597–4603, *Fax:* (215) 597–1063.

Serves: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia and West Virginia.

Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174.

Telephone: (206) 220–7660, *Fax:* (206) 220–7669.

Serves: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Republic of Marshall Islands, Federated States of Micronesia, Nevada, Northern Mariana Islands, Oregon, Republic of Palau and Washington.

Alternatively, applicants may obtain the application package electronically at *http://www.grants.gov*. All components of the appropriate application package may be accessed and downloaded (in a screen-fillable format) at *http://www.grants.gov/applicants/apply_for_grants.jsp*.

Application Submission Formats: Applications may be submitted either (i) in paper (hardcopy) format to the applicable regional office address provided above; or (ii) electronically in accordance with the procedures provided at *http://www.grants.gov*. The content of applications is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile transmissions of applications.

Paper Submissions: An eligible applicant under this notice may submit a completed paper application to the applicable EDA regional office listed above. The applicant must submit one original and two copies of the appropriate completed application package via postal mail, shipped overnight, or hand-delivered to the applicable regional office, unless otherwise directed by EDA staff. Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Therefore, applicants who submit paper submissions are advised to use guaranteed overnight delivery services.

Electronic Submissions: Applicants are encouraged to submit applications electronically in accordance with the instructions provided at *http://www.grants.gov*. The preferred file format for electronic attachments is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel formats. EDA advises that applicants not wait until the application closing date to begin the application process through *http://www.grants.gov*. Validation or rejection of your application by *http://www.grants.gov* may take additional days after your submission. Therefore, please consider the *http://www.grants.gov* validation/rejection process in developing your application submission time line.

Applicants should access the following link for assistance in navigating *http://www.grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions,* try consulting the *Applicant's User Guide.* If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for *http://www.grants.gov* are Monday-Friday, 7 a.m. to 9 p.m. (Eastern Time) (except for Federal holidays).

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the complete FFO announcement for the FY 2009 EDA American Recovery Program, contact the appropriate EDA regional office listed above under ''Addresses and Telephone Numbers for EDA's Regional Offices.'' EDA's Internet Web site at *http://www.eda.gov* also contains additional information on EDA and its programs.

SUPPLEMENTARY INFORMATION: *Electronic Access:* The FY 2009 EDA American Recovery Program FFO announcement is available at *http://www.grants.gov* and at *http://www.eda.gov/InvestmentsGrants/FFON.xml*.

Background Information on the EDA American Recovery Program: Under this notice, EDA requests applications for the EDA American Recovery Program under the auspices of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). EDA will give priority consideration to those applications that will significantly benefit regions ''that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring,'' as stipulated under the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) (Recovery Act or ARRA). EDA provides financial assistance to distressed communities in both urban and rural regions. Such distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low-income families, significant declines in per capita income, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, trade impacts, military base closures, natural or other major disasters, depletion of natural resources, reduced tax bases, or substantial loss of population because of the lack of employment opportunities. EDA's experience has shown that regional economic development to help alleviate these conditions is effected primarily through investments and decisions made by the private sector. EDA will give preference to applications that include cash contributions (over in-kind contributions) as the matching share. *See* ''Cost Sharing Requirement'' below for more detailed information.

Under the American Recovery Program, EDA will help restore, replace and expand economic activity in regions that have experienced sudden and severe economic dislocation and job

loss due to corporate restructuring, and prioritize projects that will diversify the economic base and lead to a stronger, more globally competitive and resilient regional economy. EDA's economic development activities help create jobs by encouraging business inception and growth.

EDA will evaluate and select applications according to the investment policy guidelines and funding priorities set out below under ''Evaluation and Selection Procedures.'' The Recovery Act stipulates the following specific requirements with respect to any funds expended or obligated from appropriations made thereunder.

1. *Limit on Use of Funds.* For purposes of this notice and request for applications, none of the funds appropriated or otherwise made available under ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. *See* sec. 1604 of ARRA.

2. *Certification Requirement.* Sec. 1511 mandates that with respect to any funds made available under ARRA to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. This certification must include a description of the investment, the estimated total cost, and the amount of funds to be used, and must be posted on the recipient's Web site and linked to *http://www.recovery.gov/*. A State or local agency cannot receive infrastructure investment funding from funds made available under ARRA unless this certification is made and posted. *See also* sec. 1526 of ARRA.

3. As set out in sec. 1512(c) of ARRA, no later than ten (10) days after the end of each calendar quarter, any recipient that received funds under ARRA from EDA must submit a report to EDA that contains:

a. The total amount of recovery funds received from EDA;

b. The amount of recovery funds received that were expended or obligated to projects or activities;

c. A detailed list of all projects or activities for which recovery funds were expended or obligated; and

d. Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Recipients that must report information in accordance with paragraph (d) above must register with the Central Contractor Registration database (*http://www.ccr.gov/*) or complete other registration requirements as determined by the Director of the Office of Management and Budget. Sec. 1512(d) further requires that no later than thirty (30) days after the end of each calendar quarter, EDA must make the information in reports submitted under sec. 1512(c) of ARRA as outlined above publicly available by posting the information on a Web site. OMB Memo M–09–10, ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,'' which can be accessed at *http://www.recovery.gov/*, provides additional information on requirements for Federal agencies under ARRA.

4. *Timely Start and Completion of Projects.* In using funds made available under ARRA for infrastructure investments, recipients must give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of the Act, which was February 17, 2009. Recipients of EDA investment assistance under this announcement also must use grant funds in a manner that maximizes job creation and economic benefit. *See* sec. 1602 of ARRA.

5. *''Buy American'' Restrictions.* Sec. 1605(a) stipulates that any ARRA-funded project ''for the construction, alteration, maintenance, or repair of a public building or public work [must use] iron, steel, and manufactured goods * * * produced in the United States.'' The legislation allows for a waiver of this requirement if EDA determines that:

a. Applying the requirement would be inconsistent with the public interest;

b. Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

c. The inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EDA must publish a ''detailed written justification'' as to why the requirement in sec. 1605(a) is being waived based on a finding under paragraphs (a), (b) or (c) above.

6. *Davis-Bacon Wage Rate Requirements.* As with all EDA investments in public works, economic adjustment assistance, and revolving loan fund (RLF) projects that finance construction, awards under this competitive solicitation will be subject to Davis-Bacon wage rate requirements. *See* section 602 of PWEDA (42 U.S.C. 3212) and sec. 1606 of ARRA.

Funding Availability: The Recovery Act appropriated $150,000,000 for the EDA American Recovery Program under the auspices of PWEDA. These funds shall remain available for obligation until September 30, 2010. The law mandates that $50,000,000 of the $150,000,000 must be allocated for economic adjustment assistance under section 209 of PWEDA (42 U.S.C. 3149). EDA will allocate the remaining $100,000,000 to either the Public Works and Economic Development Facilities Program or the Economic Adjustment Assistance Program, depending on the needs demonstrated among EDA's six regional offices, located in Atlanta, Austin, Chicago, Denver, Philadelphia and Seattle. Federally authorized regional economic development commissions may assist eligible applicants in submitting applications under this notice or may seek transfers directly from EDA.

The funding periods and funding amounts referenced in this notice and request for applications are subject to the availability of funds at the time of award, as well as to Department of Commerce and EDA priorities at the time of award. The Department of Commerce and EDA will not be held responsible for application preparation costs. Publication of this FFO does not obligate the Department of Commerce or EDA to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

Statutory Authority: The statutory authorities for the (i) Public Works and Economic Development Facilities Program; and (ii) Economic Adjustment Assistance Program are sections 201 (42 U.S.C. 3141) and 209 (42 U.S.C. 3149) of PWEDA, respectively. Unless otherwise provided in this notice or in the FFO announcement, applicant eligibility, program objectives and priorities, application procedures, evaluation criteria, selection procedures, and other requirements for all programs are set forth in EDA's regulations (codified at 13 CFR chapter III), and applicants must adhere to these requirements. EDA's regulations and PWEDA are available at *http://*

www.eda.gov/InvestmentsGrants/Lawsreg.xml. Please note that EDA funds may not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance under this notice and request for applications. *See* 13 CFR 302.10.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 11.300, Investments for Public Works and Economic Development Facilities; 11.307, Economic Adjustment Assistance.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance under this announcement include a(n): (i) District Organization; (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

For-profit, private-sector entities and individuals do not qualify for investment assistance under the Public Works or Economic Adjustment Assistance programs, which are the EDA programs applicable to this notice and request for applications. Therefore, requests from for-profit entities and individuals may be referred to State or local agencies, or to non-profit economic development organizations serving the region in which the project will be located.

Economic Distress Criteria: Potential applicants are responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of economic distress in the region in which the proposed project will be located. For a Public Works (13 CFR part 305; CFDA No. 11.300) or an Economic Adjustment investment (13 CFR part 307; CFDA No. 11.307), the project must be located in a region that, on the date EDA receives the application for investment assistance, meets one (or more) of the following economic distress criteria: (i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) percentage point greater than the national average unemployment rate; (ii) per capita income that is, for the most recent period for which data are available, eighty (80) percent or less of the national average per capita income; or (iii) a ''Special Need,'' as determined by EDA and as discussed in section VII. of the FFO announcement. *See* section 301 of PWEDA (42 U.S.C. 3161) and 13 CFR 301.3(a).

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1).

In the case of EDA investment assistance to a(n) (i) Indian Tribe, (ii) State (or political subdivision of a State) that the Assistant Secretary determines has exhausted its effective taxing and borrowing capacity, or (iii) non-profit organization that the Assistant Secretary determines has exhausted its effective borrowing capacity, the Assistant Secretary has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent of the total project cost. *See* sections 204(c)(1) and (2) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(5). Potential applicants should contact the appropriate EDA regional office listed above under ''Addresses and Telephone Numbers for EDA's Regional Offices'' to present information for EDA's consideration.

While cash contributions are preferred, in-kind contributions, consisting of contributions of space, equipment, or services, or forgiveness or assumptions of debt, may provide the required non-Federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. Funds from other Federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the project period, will be available as needed and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, ''*Intergovernmental Review of Federal Programs*.'' To find out more about a State's process under Executive Order 12372, applicants may contact their State's Single Point of Contact (SPOC). Names and addresses of some States' SPOCs are listed at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Evaluation and Selection Procedures: Each application package is circulated by a project officer within the applicable EDA regional office for review and comments. After all necessary information has been obtained, the application is considered by the regional office's investment review committee (IRC), which is comprised of regional office staff. The IRC discusses the application and evaluates it on two levels to (i) determine if it meets the program-specific award and application requirements provided in 13 CFR 305.2 for Public Works investments, or 13 CFR 307.2 and 307.4 for Economic Adjustment Assistance; and (ii) evaluate each application using the general evaluation criteria set out in 13 CFR 301.8. These general evaluation criteria also are provided below under ''Evaluation Criteria.''

The IRC recommends to the Regional Director whether an application merits further consideration, documenting its recommendation. For quality control assurance, EDA Headquarters reviews the IRC's analysis of the project's fulfillment of the investment policy guidelines set out below under ''Evaluation Criteria.'' After receiving quality control clearance, the Selecting Official, who is the Regional Director, considers the evaluations provided by the IRC and the degree to which one or more of the funding priorities provided below are included, in making a decision as to which applications merit further consideration.

To limit the burden on the applicant, EDA requests additional documentation only if EDA determines that the applicant's project merits further consideration. The Form ED–900 provides detailed guidance on documentation, information, and other materials that will be requested if, and only if, EDA selects the project for further consideration. EDA will inform the applicant if its application has been selected for further consideration or if the application has not been selected for funding. Unsuccessful applications will be retained in the EDA regional office in accordance with EDA's record retention schedule.

Evaluation Criteria: EDA will select applications competitively based on the investment policy guidelines and funding priority considerations listed below. EDA will evaluate the extent to

which a project embodies the maximum number of investment policy guidelines and funding priorities possible and strongly exemplifies at least one of each. All investment applications will be competitively evaluated primarily on their ability to satisfy one (1) or more of the following investment policy guidelines, each of which are of equivalent weight and also are set forth in 13 CFR 301.8.

1. Be market-based and results driven. An EDA investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: An increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. Have strong organizational leadership. An EDA investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. Advance productivity, innovation and entrepreneurship. An EDA investment will embrace the principles of entrepreneurship, enhance regional industry clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy. An EDA investment will be part of an overarching, long-term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. Demonstrate a high degree of local commitment by exhibiting:

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

Funding Priorities: Priority consideration will be given to areas of the Nation that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring. In addition, successful applications must meet one or more of the following core criteria (investment applications that meet more than one core criterion will be given more favorable consideration):

1. Investments in support of long-term, coordinated and collaborative regional economic development approaches:

- Establish comprehensive regional economic development strategies that identify promising opportunities for long-term economic growth.
- Exhibit demonstrable, committed multi-jurisdictional support from leaders across all sectors:

i. Public (*e.g.*, mayors, city councils, county executives, senior State leadership);

ii. Institutional (*e.g.*, institutions of higher learning);

iii. Non-profit (*e.g.*, chambers of commerce, development organizations); and

iv. Private (*e.g.*, leading regional businesses, significant regional industry associations).

- Generate quantifiable positive economic outcomes.
- Make a persuasive case that the project would not have occurred ''but for'' EDA's investment assistance (*e.g.*, a project in which EDA's assistance represents a substantial share of the total public infrastructure investment and which are unlikely to attract public investment absent specific and discrete EDA involvement).

2. Investments that support innovation and competitiveness:

- Develop and enhance the functioning and competitiveness of leading and emerging industry clusters in an economic region.
- Advance technology transfer from research institutions to the commercial marketplace.
- Bolster critical infrastructure (*e.g.*, transportation, communications, specialized training) to prepare economic regions to compete in the world-wide marketplace.
- Leverage local partnerships and other Federal programs (*e.g.*, Economic Development District Organizations, Trade Adjustment Assistance Centers, Small Business Development Centers, Federally authorized regional economic development commissions, University Centers, the U.S. Department of Labor's Workforce Innovation in Regional Economic Development (WIRED) initiative) that increase the project's probability of success, as well as its probability of bringing substantial benefits to the distressed community in which it is located.

3. Investments that encourage entrepreneurship:

- Cultivate a favorable entrepreneurial environment consistent with regional strategies.
- Enable economic regions to identify innovative opportunities, including use of business incubators, to promote growth-oriented small and medium-size enterprises.
- Promote community and faith-based entrepreneurship programs aimed at improving economic performance in an economic region.
- Link the economic benefits of the project to the distressed community in which it is located.

4. Investments that support strategies that link regional economies with the global marketplace:

- Enable businesses and local governments to understand that ninety-five (95) percent of our potential customers do not live in the United States.
- Enable businesses, local governments and key institutions (*e.g.*, institutions of higher education) to understand and take advantage of the numerous free trade agreements.
- Enable economic development professionals to develop and implement strategies that reflect the competitive environment of the 21st Century global marketplace.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* published in the **Federal Register** on February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610–0094. The use of Forms SF–424 (Application for Financial Assistance), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), and SF–424D (*Assurances—Construction Programs*) has been approved under OMB Control Numbers 4040–0004, 0348–0044, 4040–0007, 4040–0008, and 4040–0009, respectively. The Form CD–346 (*Applicant for Funding Assistance*) is approved under OMB Control Number 0605–0001, and Form SF–LLL (*Disclosure of Lobbying Activities*) is approved under OMB Control Number 0348–0046. Notwithstanding any other

provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 5, 2009.

Dennis Alvord,

Acting Deputy Assistant Secretary for Economic Development and Chief Operating Officer.

[FR Doc. E9–5081 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1607]

Approval of Manufacturing Authority, Foreign–Trade Zone 76, Bridgeport, CT, Derecktor Shipyards Conn., LLC (Shipbuilding)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Bridgeport Port Authority, grantee of FTZ 76, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of Derecktor Shipyards Conn., LLC, to construct and repair passenger vessels under FTZ procedures within FTZ 76 Site 4, Bridgeport, Connecticut (FTZ Docket 25–2008, filed 4–23–2008);

Whereas, the proposed shipbuilding and repair activity would be subject to the ''standard shipyard restriction'' (full customs duties paid on steel mill products);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 24219, 5–2–2008);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for the construction and repair of passenger vessels within FTZ 76 for Derecktor Shipyards Conn., LLC, as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and the following special conditions:

1. Any foreign steel mill product admitted to FTZ 76 for the DSC activity, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.
2. DSC shall meet its obligation under 15 CFR § 400.28(a)(3) by annually advising the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the Board should consider requiring customs duties to be paid on such items.
3. All foreign–origin mooring lines (HTSUS 5607.50) and linens (HTSUS Heading 6302) must be admitted to the zone in privileged foreign status (19 CFR § 146.41) or domestic (duty–paid) status (19 CFR § 146.43).

Signed at Washington, DC, this 26th day of February 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–5100 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1608]

Grant of Authority for Subzone Status, Wolverine World Wide, Inc. (Footwear and Apparel), Rockford, Cedar Springs and Howard City, MI

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in significant public benefit and is in the public interest;

Whereas, the Kent–Ottawa-Muskegon Foreign Trade Zone Authority, grantee of Foreign–Trade Zone 189, has made application to the Board for authority to establish a special–purpose subzone at the footwear and apparel distribution and processing facilities of Wolverine World Wide, Inc., located in Rockford, Cedar Springs and Howard City, Michigan (FTZ Docket 47–2008, filed 8/25/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 51440, 9/03/08); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to footwear and apparel distribution and processing at the facilities of Wolverine World Wide, Inc., located in Rockford, Cedar Springs and Howard City, Michigan (Subzone 189C), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of February 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–5120 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago: Amended Final Results Pursuant to a Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 3, 2008, the United States Court of Appeals for the Federal Circuit (''CAFC'') affirmed the Department of Commerce's (''Department'') final results of redetermination pursuant to the Department's voluntary remand, wherein the Department calculated credit expenses from the date of invoice, rather than the date of shipment for Mittal Steel Point Lisas Ltd. (''Mittal'').[1] The Court also affirmed the Department's classification of Mittal's composite wire rod as non–prime merchandise. The period of review (''POR'') is October 1, 2003, through September 30, 2004. The Department is amending the final results of the second administrative review of carbon and certain alloy steel wire rod (''wire rod'') from Trinidad and Tobago to reflect the U.S. Court of International Trade's (''CIT'') decision.

EFFECTIVE DATE: March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973.

SUPPLEMENTARY INFORMATION: On November 16, 2005, the Department published its final results in the second administrative review of the antidumping duty order on wire rod from Trinidad and Tobago covering the POR.[2]

On December 16, 2005, and January 17, 2006, respectively, Mittal filed a summons and complaint with the U.S. Court of International Trade (''CIT'') challenging the Department's credit expense calculation and treatment of non–prime merchandise. On March 7, 2007, the Department requested a voluntary remand so that we could reevaluate the calculation of credit expenses and inventory carrying costs used to calculate constructed export price. On April 24, 2007, the CIT granted the Department's voluntary remand motion to reevaluate its calculation of credit expenses and inventory carrying costs and affirmed the Department's treatment of non–prime merchandise.

On June 21, 2007, the Department filed with the CIT its final results of redetermination, calculating credit expenses from the invoice date, rather than the shipment date. The Department also changed the inventory carrying costs used in its constructed export price calculation to reflect the date of invoice as the date of sale. On August 8, 2007, the CIT sustained the final results of redetermination on remand. On September 7, 2007, the Department notified the public that the final judgment in this case is not in harmony with the *Final Results*.

On October 5, 2007, and October 9, 2007, respectfully, both Mittal and Gerdau Ameristeel Corp. and Keystone Consolidated Industries, Inc., the petitioners, appealed the CIT's decision. On December 3, 2008, the CAFC affirmed the CIT's decision on both issues. The deadline to appeal the redetermination pursuant to remand is March 3, 2009, 90 days after the date the CAFC affirmed the CIT's decision (*i.e.*, December 3, 2008). However, on January 12, 2009, Mittal filed a motion to lift the injunction on liquidating entries related to this case, in which it informed the CIT that neither it nor petitioners intended to petition the U.S. Supreme Court for *certiorari*. The CIT granted Mittal's motion on January 13, 2009. Therefore, the Department is amending the Final Results with respect to Mittal.

Amended Final Results of Review

The remand redetermination explained that the Department determined to calculate credit expense from the date of invoice. Based on this reconsideration, we are amending the final results for Mittal. Accordingly, we are applying to Mittal the following dumping margin.

Manufacturer/exporter	Period of review	Weighted–average margin (%)	
		Original:	Revised:
Mittal Steel Point Lisas Ltd. (formerly Caribbean Ispat Limited)	10/1/2003–9/30/2004	4.13	4.08

Assessment

The Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by these amended final results. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these amended final results

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries. Pursuant to 19 CFR 351.402(f)(3), 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.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained

[1] *See Mittal Steel Point Lisas Ltd. v. United States*, Unites States Court of Appeals 2008-1040, -1054 (Fed. Cir. 2008) (''Mittal v. United States'').

[2] *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 69512 (November 16, 2005) (''*Final Results*'').

[3] *See Carbon and Certain Alloy Steel Wire Rod from Trinidad & Tobago: Amended Notice of Court Decision Not In Harmony with Final Results of Antidumping Duty Administrative Review*, 72 FR 51408 (September 7, 2007).

in the APO itself. 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 the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–5114 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order.

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 10, 2009

SUMMARY: On November 3, 2008, the Department of Commerce (''Department'') initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from the People's Republic of China (''PRC''). On the basis of a notice of intent to participate, and an adequate substantive response from domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontín, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; Telephone: (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on malleable cast iron pipe fittings (''MCP'') from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Review*, 73 FR 65292 (November 3, 2008). On November 11, 2008, the Department received a notice of intent to participate from domestic interested parties, Anvil International, Inc. and Ward Manufacturing, Inc. (collectively ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers of MCP in the United States. On December 2, 2008, the Department received a substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order. *See* Memorandum to the File titled, ''Adequacy Determination: Sunset Review of the Antidumping Duty Order on Malleable Cast Iron Pipe Fittings from the People's Republic of China,'' dated January 13, 2009.

Scope of the Order

The products covered by the antidumping duty order are certain malleable iron pipe fittings, cast, other than grooved fittings, from the PRC. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of the order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, and is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c) of the Act, we determine that revocation of the antidumping duty order on MCP from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Exporter/Manufacturer	Margin(percent)
Beijing Sai Lin Ke Hardware Co. Ltd. (''SLK'')	15.92
Langfang Pannext Pipe Fitting Co., Ltd.	7.35
Chengde Malleable Iron General Factory (''Chengde'')	11.18
SCE Co., Ltd. (''SCE'')	11.18
Jinan Meide Casting Co., Ltd.	11.31
PRC–Wide	111.36

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–5086 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin–Madison, 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 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 08–054. Applicant: University of Wisconsin–Madison, Madison, WI 53715–1218. Instrument: FEI Titan 80–200 Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 5819, February 2, 2009.

Docket Number: 08–059. Applicant: Emory University, Atlanta, GA 30322–4250. Instrument: Electron Microscope, Model JEM–1011. Manufacturer: JEOL, Japan. Intended Use: See notice at 74 FR 5819, February 2, 2009.

Docket Number: 08–060. Applicant: University of Arizona, Tucson, AZ 85721. Instrument: FEI Inspect S Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 5819, February 2, 2009.

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: March 4, 2009.

Chris Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration

[FR Doc. E9–5088 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO00

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on March 24-26, 2009. The Council will convene on Tuesday, March 24, 2009, from 9:30: a.m. to 5 p.m. They will reconvene on Wednesday, March 25, 2009, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m., on that same date. The Council will reconvene on Thursday, March 26, 2009, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Carambola Beach Resort and Spa, located at Estate Davis Bay, St. Croix, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 130th regular Council Meeting to discuss the items contained in the following agenda:

March 24, 2009 - 9 a.m. to 5:30 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of the 129th Council Meeting Verbatim Transcription
- Executive Director's Report
- Final Guidelines National Standard 1
- SEDAR Report
- ACLG Report/Recommendations
- SSC Report/Recommendations
- ACLs/AMs Scoping Document

March 25, 2009, 9 a.m. – 5 p.m.

- Continuation of ACLs/AMs Scoping Document
- Presentations

– HMS Caribbean Amendment Update – Greg Fairclough

– Presentation on Coral Issues

– Traditional Ecological Knowledge among Puerto Rico Fishermen - Manuel Valdes Pizzini

– Determining Appropriate Boundaries to Protect Nassau Grouper and Yellowtail Spawning Aggregations – Richard Nemeth

– How Effective are No-Take areas on Current and Historic Nassau Grouper Spawning Grounds? – Brice Semmens

– Trap Study Presentation – Julian Magras

– US Customs and Border Protection (CBP) Presentation – Jose Vazquez

- Bajo de Sico Alternatives

5:15 p.m. – 6 p.m.

- Administrative Committee Meeting

–

– Budget 2009/10

– SOPPs Amendment(s)

– Other Business

March 26, 2009, 9 a.m. – 5 p.m.

- Enforcement Reports

– Puerto Rico - DNER

– U.S. Virgin Islands - DPNR

– NOAA/NMFS

– U.S. Coast Guard

- Administrative Committee Recommendations
- Meetings Attended by Council Members and Staff

Public Comment Period (5-minute presentations)

- Other Business
- Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone (787) 766–5926, at least five days prior to the meeting date.

Dated: March 6, 2009.

Emily H. Menashes,

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

[FR Doc. E9–5170 Filed 3–6–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN74

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Conducting Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take four species of marine mammals, by harassment, incidental to testing and training during Precision Strike Weapons (PSW) tests in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (AFB).

DATES: This authorization is effective from March 19, 2009, through March 18, 2010.

ADDRESSES: The application and LOA are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or by contacting the individual mentioned below.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers 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 by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals. The National Defense Authorization Act of 2004 (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Authorization, in the form of annual LOAs, may be granted for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to PSW testing and training within the Eglin Gulf Test and Training Range (EGTTR) in the GOM, were published on November 24, 2006 (71 FR 67810), and remain in effect from December 26, 2006, through December 27, 2011. The species that Eglin AFB may take during PSW testing and training are Atlantic bottlenose (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) and dwarf (*Kogia simus*) and pygmy sperm whales (*Kogia breviceps*).

Issuance of the annual LOA to Eglin AFB is based on findings made in the preamble to the final rule that the total takings by this project would result in no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. Without any mitigation measures, a small possibility exists for one bottlenose dolphin and one spotted dolphin to be exposed to blast levels from the PSW testing sufficient to cause mortality. Additionally, less than two cetaceans might be exposed to noise levels sufficient to induce Level A harassment (injury) annually, and as few as 31 or as many as 52 cetaceans (depending on the season and water depth) could potentially be exposed (annually) to noise levels sufficient to induce Level B harassment in the form of temporary (auditory) threshold shift (TTS).

While none of these impact estimates consider the proposed mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species, NMFS has authorized Eglin AFB a total of one mortality, two takes by Level A harassment, and 53 takes by Level B harassment (TTS) annually. However, the proposed mitigation measures described in the final rule (71 FR 67810, November 24, 2006) and the LOA are anticipated to reduce potential impacts to marine mammals in both numbers and degree of severity. These measures include a conservative safety range for marine mammal exclusion; incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives; and a prohibition on detonations whenever marine mammals are detected within the safety zone, may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance. This LOA may be renewed annually based on a review of the activity, completion of monitoring requirements, and receipt of reports required by the LOA.

Summary of Request

On December 12, 2008, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to PSW testing and training in the GOM.

Summary of Activity and Monitoring Conducted During 2008

In 2008, two Joint Air-to-Surface Stand-Off Missile Jettison Test Vehicles (JTVs) were released into the GOM on April 3, 2008, and May 30, 2008. The JTVs were inert with no control surface deployment or engine start. Seek Eagle uses these items to test release aerodynamic performance of the weapon, launcher, and aircraft before permitting the release of the other two test vehicle configurations. The JTVs

were released approximately 20 mi off the coast of Cape Sand Blas. No marine mammals were seen during the boat sweep or at release. No evidence of injury or death to marine mammals was noted.

The Small Diameter Bomb (SDB) releases over the GOM for 2008 were as follows: two Guided Test Vehicle (GTV) releases on February 2, 2008, and March 21, 2008 and three Separation Test Vehicle (STV) releases on November 20, 2008, November 25, 2008, and December 8, 2008. The GTVs have an inert fuse. The warhead is filled with telemetry hardware and has no explosives. The STVs were also completely inert. For all SDB releases, no marine mammals were seen during the boat sweep or at release. No evidence of injury or death to marine mammals was noted.

Authorization

The U.S. Air Force complied with the requirements of the 2008 LOA, and NMFS has determined that there was no take of marine mammals by the U.S. Air Force in 2008. Accordingly, NMFS has issued an LOA to Eglin AFB authorizing the take by harassment of marine mammals incidental to PSW testing and training in the EGTTR in the GOM. Issuance of this LOA is based on findings described in the preamble to the final rule (71 FR 67810, November 24, 2006) and supported by information contained in Eglin's December, 2008 request for a new LOA that the activities described under this LOA will not result in more than the incidental harassment of certain marine mammal species and will have 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 does not apply for this action.

Dated: March 4, 2009.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–5079 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Public User ID Badging.

Form Number(s): PTO–2030, PTO–2224.

Agency Approval Number: 0651–0041.

Type of Request: Revision of a currently approved collection.

Burden: 1,045 hours annually.

Number of Respondents: 10,500 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately five to ten minutes (0.08 to 0.17 hours) to complete the information in this collection, including gathering the necessary information, preparing the appropriate form, and submitting the completed request.

Needs and Uses: The USPTO is required by 35 U.S.C. 41(I)(1) to maintain a Public Search Facility to provide patent and trademark collections for searching and retrieval of information. In order to manage the patent and trademark collections that are available to the public, the USPTO issues online access cards to customers who wish to use the electronic search systems at the Public Search Facility. Under the authority provided in 41 CFR part 102–81, the USPTO also issues security identification badges to members of the public who wish to use the facilities at the USPTO. The public uses this information collection to request an online access card or a security identification badge and to register for user training classes.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion with annual renewals for online access cards and security identification badges.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

• *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0041 Public User ID Badging copy request'' in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 9, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: March 3, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–5060 Filed 3–9–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Camtek Construction Products Corporation

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Camtek Construction Products Corporation, a revocable, nonassignable, exclusive license to practice in the field of use of cleaning storm water for industrial markets in the United States and certain foreign countries, for the Government-owned invention described in U.S. Patent No. 7,160,465 and 7,025,887 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 25, 2009.

ADDRESSES: Written objections are to be filed with the NAVFACESC, EV423, 1100 23rd Avenue, Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Head, Technology Transfer Office, NAVFACESC, EV423, 1100 23rd Avenue, Port Hueneme, CA 93043–4370, *telephone:* 805–982–4897. Due to U.S. Postal delays, please *fax:* 805–982–4832, *e-mail: kurt.buehler@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: March 4, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–5020 Filed 3–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Non-Exclusive Patent License; Truston Technologies Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Truston Technologies Inc., a revocable, nonassignable, non-exclusive license to practice in the field of use of *floating barrier systems* for industrial markets in the United States and certain foreign countries, for the Government-owned invention described in U.S. Patent No. 6,681,709, 6,843,197, 7,401,565 U.S. Patent Application 10/828,533 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 25, 2009.

ADDRESSES: Written objections are to be filed with the NAVFACESC, EV423, 1100 23rd Avenue, Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Head, Technology Transfer Office, NAVFACESC, EV423, 1100 23rd Avenue, Port Hueneme, CA 93043–4370, *telephone:* 805–982–4897. Due to U.S. Postal delays, please *fax:* 805–982–4832, *e-mail: kurt.buehler@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: March 4, 2009.

A.M. Vallandingham

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–5028 Filed 3–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Meeting of the Board of Advisors (BOA) to The President, Naval Postgraduate School (NPS)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Board of Advisors to the President, Naval Postgraduate School will be held. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, April 28, 2009, from 8 a.m. to 4 p.m. and on Wednesday, April 29, 2009, from 8 a.m. to 12 p.m. Pacific Time Zone.

ADDRESSES: The meeting will be held at the Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA, 93943–5001, telephone number: 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the Board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent.

Individuals without a DoD government/CAC card require an escort at the meeting location. For access, information, or to send written comments regarding the NPS BOA contact Ms. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax: 831–656–3145 by April 15, 2009.

Dated: March 4, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–5013 Filed 3–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Revised Record of Decision for Hawaii Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) announces its decision to revise the Record of Decision (ROD) issued on June 26, 2008, and published on July 7, 2008 (73 FR 38424) on the Final Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) for the Hawaii Range Complex (HRC). These revisions address the authorizations recently issued by the National Marine Fisheries Service (NMFS) in December 2008 and January 2009 under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) for the incidental harassment of marine mammals resulting from Navy training and Department of Defense (DoD) research, development, testing, and evaluation (RDT&E) activities conducted within the HRC for the proposed action presented in Alternative 3.

The Revised ROD is effective February 26, 2009. Except as discussed in the Revised ROD, all other provisions of the June 26, 2008 ROD remain in full force and effect. Implementation of the preferred alternative, initiated in June 2008 will continue. Because the Navy is required by section 5062 of Title 10 of the United States Code to organize, train, equip, and maintain combat-ready forces, ongoing training and RDT&E activities within the HRC will continue at current levels in the event that the proposed action is not implemented.

SUPPLEMENTARY INFORMATION: The Revised ROD has been distributed to all those individuals who requested a copy of the Final EIS/OEIS and agencies and organizations that received a copy of the Final EIS/OEIS. The full text of the Revised ROD is available for public viewing at *http://www.govsupport.us/navynepahawaii/downloads.aspx.* Single copies of the Revised ROD will be made available upon request by contacting the Public Affairs Officer, Pacific Missile Range Facility, *Attn:* HRC EIS/OEIS REVISED ROD, P.O. Box 128, Kekaha, Hawaii 96752–0128; *e-mail: feis_hrc@govsupport.us*; or calling the Public Affairs Officer at *telephone:* 866–767–3347.

Dated: March 4, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–5026 Filed 3–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or April 9, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: March 5, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Summer Reading Program Study.

Frequency: On occasion.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,033.

Burden Hours: 177.

Abstract: The current OMB package requests clearance for the instruments to be used in the Summer Reading Program Study (SRP). The SRP study is a project designed to test a summer reading program's impact of reducing summer reading loss, especially for struggling readers. The data collection instruments will measure the background characteristics of the sample, the level of implementation and outcomes of the summer reading program.

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 3925. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection 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. E9–5080 Filed 3–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2008 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368A.

DATES: *Applications Available:* March 10, 2009.

Deadline for Transmittal of Applications: May 11, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to enhance the quality of assessment instruments and systems used by States for measuring the achievement of all students.

Priorities: This competition includes four absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7301a). The competitive preference priorities are from Appendix E to the notice of final requirements for optional State consolidated applications submitted under section 9302 of the ESEA, published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Absolute Priorities: For FY 2008 funds, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

These priorities are:

Absolute Priority 1. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of the ESEA.

Absolute Priority 2. Measure student academic achievement using multiple measures of student academic achievement from multiple sources.

Absolute Priority 3. Chart student progress over time.

Absolute Priority 4. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance- and technology-based academic assessments.

Competitive Preference Priorities: Under 34 CFR 75.105(c)(2)(i) we award

up to an additional 35 points to an application, depending on how well an application meets these competitive preference priorities.

For FY 2008 funds, these priorities are:

Competitive Preference Priority 1. Accommodations and alternate assessments (up to 20 points). Applications that can be expected to advance practice significantly in the area of increasing accessibility and validity of assessments for students with disabilities or limited English proficiency, or both, including strategies for test design, administration with accommodations, scoring, and reporting.

Competitive Preference Priority 2. Collaborative efforts (up to 10 points). Applications that are sponsored by a consortium of States.

Competitive Preference Priority 3. Dissemination (up to 5 points). Applications that include an effective plan for dissemination of results.

Program Authority: 20 U.S.C. 7301a and 7842.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,760,000 in FY 2008 funds.

Estimated Range of Awards: $500,000–$2,000,000.

Estimated Average Size of Awards: $1,460,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) as defined in section 9101(41) of the ESEA and consortia of such SEAs.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the fiscal agent.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can access the electronic grant application for the Enhanced Assessment Instruments Grants Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.368, not 84.368A). You can also obtain a copy of the application package by contacting the program contact persons listed under *Agency Contacts* in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application and the absolute and competitive preference priorities. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font no smaller than 11.0 point for all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables figures, and graphs. (Font sizes that round up to 11, such as 10.7 point, will be considered as smaller than 11.0.)

The page limit does not apply to the cover sheet, budget section (chart and narrative), assurances and certifications, response regarding research activities involving human subjects, General Education Provisions Act 427 response, one-page abstract, personnel résumés, and letters of support; however, discussion of how the application meets the absolute priorities, how well the application meets the competitive preference priorities, and how well the application addresses each of the selection criteria must be included within the application narrative and therefore is subject to the page limit.

Our reviewers will not read any pages of your application that exceed the page limit or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: March 10, 2009.

Deadline for Transmittal of Applications: May 11, 2009.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*http://Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Enhanced Assessment Instruments competition, CFDA number 84.368A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and

submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Enhanced Assessment Instruments competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.368, not 84.368A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** of section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission

requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Gregory Dennis, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W243, Washington, DC 20202–6200. *Fax:* (202) 205–4921.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.368A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.368A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from Appendix E to the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, or at the end of your no-cost extension, if any, you must submit a final performance report, including financial information, as directed by the Secretary. Grantees must also submit an interim progress report twelve months after the award date that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed four measures to evaluate the overall effectiveness of the Enhanced Assessment Instruments Grants Program: (1) The number of States that participate in Enhanced Assessment Instruments Grants projects funded by this competition; (2) the percentage of grantees that, at least twice during the period of their grants, make available to SEA staff in non-participating States and to assessment researchers information on findings resulting from the Enhanced Assessment Instruments Grants through presentations at national conferences, publications in refereed journals, or other products disseminated to the assessment community; (3) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools regarding assessment systems or assessments; and (4) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools specifically regarding accommodations and alternate assessments for students with disabilities and limited English

proficient students. Grantees will be expected to include in their performance reports information about the accomplishments of their projects because the Department will need to implement and aggregate data on these measures.

VII. Agency Contacts

For Further Information Contact: Collette Roney or Sharon Hall, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W118, Washington, DC 20202–6132. *Telephone:* (202) 260–0934, or by *e-mail: Collette.Roney@ed.gov* or *Sharon.Hall@ed.gov*.

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education, to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: March 5, 2009.

Joseph C. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–5097 Filed 3–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 2, 2009, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Approval of March meeting minutes.
- Deputy Designated Federal Officer's comments.
- Federal coordinator's comments.
- Liaisons' comments.
- Presentations.
- Administrative issues—Actions:
  - ○ Committee updates.
  - ○ Motions.
  - ■ Recommendation 09–02.
  - ■ Recommendation 09–03.
- Public comments.
- Final comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html*.

Issued at Washington, DC, on March 4, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–5021 Filed 3–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 8, 2009, 9 a.m.–12 p.m.

ADDRESSES: Holiday Inn Santa Fe, 4048 Cerrillos Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or *E-mail: msantistevan@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

9 a.m.

Call to order by Deputy Designated

Federal Officer, Jeff Casalina

Establishment of a Quorum, Lorelei Novak

A. Roll call

B. Excused absences

Welcome and introductions, J.D. Campbell

Approval of agenda

9:15 a.m.

Public comment period

9:30 a.m.

Well Screen Analysis Report: Review and Recommendations

Presentation, Steve Acree and Rick Wilkin, Kerr Laboratory

12 p.m.

Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/minutes/board-minutes.htm*.

Issued at Washington, DC, on March 5, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–5022 Filed 3–9–09; 8:45 am]

BILLING CODE 6405–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8778–8]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2007 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF_6) emissions. The inventory also includes estimates of carbon fluxes in U.S. agricultural and forest lands. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Climate Change Division (6207J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 343–2359. You are welcome and encouraged to send an e-mail with your comments to *hockstad.leif@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9432, *hockstad.leif@epa.gov*.

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's Climate Change Site at: *http://www.epa.gov/climatechange/emissions/usinventoryreport.html*.

Dated: February 24, 2009.

Elizabeth Craig,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–5054 Filed 3–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2009.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Iowa River Bancorp, Inc., Tama, Iowa, to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle Bank, Marshalltown, Iowa.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Jourdanton Bancshares, Inc., Jourdanton, Texas, to become a bank

holding company by acquiring 100 percent of the voting shares of Jourdanton State Bank, Jourdanton, Texas.

Board of Governors of the Federal Reserve System, March 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5010 Filed 3–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting

The Consumer Advisory Council will meet on Thursday, March 26, 2009. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, March 24, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- Foreclosures

Members will discuss various issues related to foreclosures and efforts to prevent them, including the Making Home Affordable program.

- Neighborhood and Community Stabilization

Members will discuss strategies and challenges in the effort to stabilize communities affected by foreclosures, including the implementation of the Neighborhood Stabilization Program.

- Access to Credit

Members will discuss various issues related to the current availability of credit to consumers and small businesses.

- Proposed Rules Regarding Overdraft Services

Members will discuss the proposed amendments to Regulation E, which would provide consumers with certain choices relating to the use of overdraft services and the assessment of overdraft fees.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake, 202–452–6470.

Board of Governors of the Federal Reserve System, March 5, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–4984 Filed 3–9–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, March 16, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 6, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5094 Filed 3–6–09; 4:15 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meetings of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

AUTHORITY: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces a series of Federal advisory committee meetings regarding the national health promotion and disease prevention objectives for 2020, to be held on the Internet (via Webex software). These meetings will be the equivalent of in-person meetings and will be open to the public. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 (Committee) will address issues regarding the nation's health promotion and disease prevention objectives and efforts to develop goals and objectives to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and provide recommendations for initiatives to occur during the initial implementation phase of the goals and objectives. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

DATES: The Committee will meet on the Internet at the following times: March 26, 2009, from 12 p.m. to 2 p.m. Eastern Daylight Time (EDT); April 20, 2009, from 12 p.m. to 2 p.m. EDT; and May 15, 2009, from 1 p.m. to 3 p.m. EDT.

ADDRESSES: The meetings will be held via the Internet using WebEx software.

For detailed instructions about how to make sure that your computer's operating system and browser are set up for WebEx, please visit the ''Secretary's Advisory Committee'' page of the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/advisory/default.asp.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION: The names of the 13 members of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 are available at *http://www.healthypeople.gov.*

Purpose of Meeting: Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to listen to the online Advisory Committee meetings. There will be no opportunity for oral public comments during the online Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 meetings. Written comments are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov.* Please note that the public comment Web site will be updated throughout the Healthy People development process, so people should return to the site frequently and provide their input.

To listen to the Committee meetings, individuals must pre-register to attend the meetings at the Healthy People Web site located at *http://www.healthypeople.gov.* Participation in the meetings is limited. Registrations will be accepted until maximum WebEx capacity is reached and must be completed by: 9 a.m. EDT on March 26, 2009, for the March 26, 2009 meeting; 9 a.m. EDT on April 20, 2009, for the April 20, 2009 meeting; and 9 a.m. EDT on May 15, 2009, for the May 15, 2009 meeting. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space becomes available.

Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: March 4, 2009.

Carter Blakey,

Lead, Community Strategies Team, Office of Disease Prevention and Health Promotion.

[FR Doc. E9–4982 Filed 3–9–09; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–0314]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project:

The National Survey of Family Growth (NSFG), (0920–0314)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''family formation, growth, and dissolution,'' as well as ''determinants of health'' and ''utilization of health care'' in the United States. This three-year clearance request includes the data collection in 2009–2012 for the continuous NSFG. The major change in this revision is an increase in the burden hours. This is due to the fact that the 2006 clearance contained a small pretest and two years of the full survey. This submission contains three years of the full survey which causes an increase in burden. No questionnaire changes are requested through 2010; some limited changes may be requested after that, to be responsive to emerging public policy issues.

The National Survey of Family Growth (NSFG) was conducted periodically between 1973 and 2002, and continuously since 2006, by the National Center for Health Statistics, CDC. Each year, about 14,000 households are screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews average 60 minutes for males and 80 minutes for females. The response rate since 2006 is about 75 percent for both males and females.

The NSFG program produces descriptive statistics which measure factors associated with birth and pregnancy rates, including contraception, infertility, marriage, divorce, and sexual activity, in the U.S. population 15–44; and behaviors that affect the risk of sexually transmitted diseases (STD), including HIV, and the medical care associated with contraception, infertility, and pregnancy and childbirth.

NSFG data users include the DHHS programs that fund it, including CDC/NCHS and seven others (The Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD); the Office of Population Affairs (DHHS/OPA); the Office of the Assistant Secretary for Planning and Evaluation (DHHS/OASPE); the Administrations for Children and Families; the Children's Bureau (DHHS/ACF/CB); the CDC's Division of HIV/AIDS Prevention (CDC/DHAP); the CDC's Division of STD Prevention (CDC/DSTD); and the CDC's Division of

Reproductive Health (CDC/DRH)). The NSFG is also used by state and local governments; private research and action organizations focused on men's and women's health, child well-being, and marriage and the family; academic researchers in the social and public health sciences; journalists, and many others.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 7,442.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents/instruments	Number of responses	Number of responses per respondent	Average burden per response (in hours)
Household Screener	14,000	1	3/60
Female Interview	2,750	1	1.5
Male Interview	2,250	1	1
Female and Male Verification questionnaire	1,400	1	5/60
Female and Male Testing questions	250	1	1

Dated: February 27, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–4985 Filed 3–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Project

Title: Head Start Family and Child Experiences Survey (FACES 2009).

OMB No.: 0970–0151.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data on a new cohort for the Head Start Family and Child Experiences Survey (FACES). FACES is a longitudinal study of a nationally representative sample of Head Start programs and children that will collect information for Head Start performance measures. Data for FACES will be collected annually through interviews with Head Start parents, teachers, program directors and other Head Start staff, as well as direct child assessments and observations of Head Start classrooms.

Data will be collected on a sample of approximately 3,400 children and families from 60 Head Start programs. Data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Site visitors will interview Head Start teachers in approximately 405 classrooms and make observations of the types and quality of classroom activities. Interviews will also be conducted with Head Start program directors and other staff. A follow-up for children in Kindergarten will include child assessments, parent interviews, and teacher questionnaires and child ratings.

The purpose of this data collection is to fulfill the requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), and by the 1994 reauthorization of the Head Start program (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which call for periodic assessments of Head Start's quality and effectiveness.

Respondents: Parents of Head Start Children, Head Start Children, Head Start Teachers, Head Start Program Directors and Staff, and Kindergarten Teachers of former Head Start enrollees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Parent Interview Head Start Enrollees	2,357	1.0	1	2,357
Parent Interview Head Start Leavers	828	1.0	0.25	207
Child Assessment	3,245	1.0	0.75	2,434
Head Start Teacher Interview	405	1.0	0.50	203
Head Start Teacher Child Rating	405	9.0	0.17	620
Program Director Interview	20	1.0	0.50	10
Center Director Interview	40	1.0	0.50	20
Education Coordinator Interview	20	1.0	10.50	10
Kindergarten Teacher Questionnaire	1,128	1.3	0.50	733
Kindergarten Teacher Child Rating	1,128	1.3	0.17	249
Total Annual Burden Hours	.....	.....	.....	6,843

Additional Information:

Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of

Management and Budget Paperwork Reduction Project. *Fax:* 202–395–6974. *Attn:* Desk Officer for the Administration for Children and Families.

Dated: March 4, 2009.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E9–4926 Filed 3–9–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Help America Vote Act (HAVA) Voting Access Application and Annual Report.

OMB No.: 0970–0327.

Description: This is a revision to include the application for the previously cleared Help America Vote Act (HAVA) Annual report, Payments to States and Units of Local Government, (42 U.S.C. 15421).

The Help America Vote Act (HAVA) application to States and Units of Local Government is required by Federal statute and regulation. Each State or Unit of Local Government must prepare an application to receive funds under the Help America Vote Act (HAVA), Public Law 107–252, Title II, Subtitle D, Part 2, Sections 261 to 265, Payments to States and Units of Local Government to Assure Access for Individuals with Disabilities (42 U.S.C. 15421–25). The application is provided in writing to the Administration for Children and Families, Administration on Developmental Disabilities.

An annual report is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Public Law 107–252, Section 261, Payments to States and Units of Local Government, 42 U.S.C. 15421). Each State or Unit of Local Government must prepare and submit an annual report at the end of every fiscal year. The report addresses the activities conducted with the funds provided during the year. The information collected from the annual report will be aggregated into an annual profile of how States have utilized the funds and establish best practices for election officials. It will also provide an overview of the State election goals and accomplishments and permit the Administration on Developmental Disabilities to track voting progress to monitor grant activities.

Respondents: Secretaries of State, Directors, State Election Boards, State Chief Election officials.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Help America Vote Act (HAVA) Voting Access Annual Report	50	1	24	1,200
Help America Vote Act (HAVA) Voting Access Application	55	1	50	2,750

Estimated Total Annual Burden Hours: 3,950

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: March 5, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–4992 Filed 3–9–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0521]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 9, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0581. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto,Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees—(OMB Control Number 0910–0581)—Extension

Sponsors are required to monitor studies evaluating new drugs, biologics, and devices (21 CFR 312.50 and 312.56 for drugs and biologics and 21 CFR 812.40 and 812.46 for devices). Various individuals and groups play different roles in clinical trial monitoring. One such group is a Data Monitoring Committee (DMC), appointed by a sponsor to evaluate the accumulating outcome data in some trials. A clinical trial DMC is a group of individuals with pertinent expertise that reviews on a regular basis accumulating data from an ongoing clinical trial. The DMC advises the sponsor regarding the continuing safety of current participants and those yet to be recruited, as well as the continuing validity and scientific merit of the trial.

FDA's guidance document is intended to assist sponsors of clinical trials in determining when a DMC is needed for monitoring a study, and how such committees should operate. The guidance addresses the roles, responsibilities, and operating procedures of DMCs and describes certain reporting and recordkeeping responsibilities, including the following: (1) Sponsor notification to the DMC regarding waivers, (2) DMC reports of meeting minutes to the sponsor, (3) sponsor reports to FDA on DMC recommendations related to safety, (4) standard operating procedures (SOPs) for DMCs, and (5) DMC meeting records.

1. Sponsor Notification to the DMC Regarding Waivers

The sponsor must report to FDA serious unexpected adverse events in drugs and biologics trials (§ 312.32 (21 CFR 312.32)) and unanticipated adverse events in the case of device trials under (§ 812.150(b)(1) (21 CFR 812.150(b)(1))). The agency recommends in the guidance that sponsors notify DMCs about any waivers granted by FDA for expedited reporting of certain serious events.

2. DMC Reports of Meeting Minutes to the Sponsor

The agency recommends in the guidance that the DMC issue a written report to the sponsor based on the DMC meeting minutes. Reports to the sponsor should include only those data generally available to the sponsor. The sponsor may convey the relevant information in this report to other interested parties, such as study investigators. Meeting minutes or other information that include discussion of confidential data would not be provided to the sponsor.

3. Sponsor Reporting to FDA on DMC Recommendations Related to Safety

The requirement of the sponsor to report DMC recommendations related to serious adverse events in an expedited manner in clinical trials of new drugs (§ 312.32(c)) would not apply when the DMC recommendation is related to an excess of events not classifiable as serious. Nevertheless, the agency recommends in the guidance that sponsors inform FDA about all recommendations related to the safety of the investigational product whether or not the adverse event in question meets the definition of ''serious.''

4. SOPs for DMCs

In the guidance, we recommend that sponsors establish procedures to do the following things:

- Assess potential conflicts of interest of proposed DMC members;
- Ensure that those with serious conflicts of interest are not included in the DMC;
- Provide disclosure to all DMC members of any potential conflicts that are not thought to impede objectivity and, thus, would not preclude service on the DMC;
- Identify and disclose any concurrent service of any DMC member on other DMCs of the same, related or competing products;
- Ensure separation, and designate a different statistician to advise on the management of the trial, if the primary study statistician takes on the responsibility for interim analysis and reporting to the DMC; and
- Minimize the risks of bias that arise when the primary study statistician takes on the responsibility for interim analysis and reporting to the DMC, if it appears infeasible or highly impractical for any other statistician to take over responsibilities related to trial management.

5. DMC Meeting Records

The agency recommends in the guidance that the DMC or the group preparing the interim reports to the DMC maintain all meeting records. This information should be submitted to FDA with the clinical study report (§ 314.50(d)(5)(ii) (21 CFR 314.50(d)(5)(ii))).

Description of Respondents: The submission and data collection recommendations described in this document affect sponsors of clinical trials and DMCs.

Burden Estimate: Table 1 of this document provides the burden estimate of the annual reporting burden for the information to be submitted in accordance with the guidance. Table 2 of this document provides the burden estimate of the annual recordkeeping burden for the information to be maintained in accordance with the guidance.

Reporting and Recordkeeping Burdens

Based on information from FDA review divisions, FDA estimates there are approximately 740 clinical trials with DMCs regulated by the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health. FDA estimates that the average length of a clinical trial is 2 years, resulting in an annual estimate of 370 clinical trials. Because FDA has no information on which to project a change in the use of DMCs, FDA estimates that the number of clinical trials with DMCs will not change significantly in the next few years. For purposes of this information collection, FDA estimates that each sponsor is responsible for approximately 10 trials, resulting in an estimated 37 sponsors that are affected by the guidance annually.

Based on information provided to FDA by sponsors that have typically used DMCs for the kinds of studies for which this guidance recommends them, FDA estimates that the majority of sponsors have already prepared SOPs for DMCs, and only a minimum amount of time is necessary to revise or update them for use for other clinical studies. FDA receives very few requests for waivers regarding expedited reporting of certain serious events; therefore, FDA has estimated one respondent per year to account for the rare instance a request may be made. FDA estimates that the DMCs would hold two meetings per year per clinical trial resulting in the issuance of two DMC reports of meeting minutes to the sponsor. One set of both of the meeting records should be maintained per clinical trial. Based on FDA's experience with clinical trials using DMCs, FDA estimates that the sponsor on average would issue two interim reports per clinical trial to the DMC. FDA estimates that the DMCs would hold two meetings per year per clinical trial resulting in the issuance of two DMC reports of meeting minutes to the sponsor. One set of both meeting records should be maintained per clinical trial.

The ''Hours per Response'' and ''Hours per Record'' are based on FDA's experience with comparable recordkeeping and reporting provisions applicable to FDA regulated industry. The ''Hours per Response'' include the time the respondent would spend reviewing, gathering, and preparing the

information to be submitted to the DMC, FDA, or the sponsor. The ''Hours per Record'' include the time to record, gather, and maintain the information.

The information collection provisions in the guidance for §§ 312.30 (21 CFR 312.30), 312.32, 312.38 (21 CFR 312.38), 312.55 (21 CFR 312.55), and 312.56 have been approved under OMB control no. 0910–0014; § 314.50 has been approved under OMB control no. 0910–0001; and §§ 812.35 (21 CFR 812.35) and 812.150 have been approved under OMB control no. 0910–0078.

In the **Federal Register** of October 8, 2008 (73 FR 58970), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of Guidance/Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
4.4.1.2. Sponsor notification to the DMC regarding waivers	1	1	1	.25	.25
4.4.3.2. DMC reports of meeting minutes to the sponsor	370	2	740	1	740
5. Sponsor reporting to FDA on DMC recommendations related to safety	37	1	37	.5	18.5
Total					758.75

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Recordkeeping Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
4.1. and 6.4 SOPs for DMCs	37	1	37	8	296
4.4.3.2. DMC meeting records	370	1	370	2	740
Total					1,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 3, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–4971 Filed 3–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0650]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 9, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0183. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions—(OMB Control Number 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with Sec. 10.20 (21 CFR 10.20) (submission of documents to Division of Dockets Management), a citizen petition requesting the Commissioner of Food and Drugs (the Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, not-for-profit institutions and businesses or other for-profit institutions or groups.

Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal, Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under 21 CFR 10.25 (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions who are requesting from the Commissioner of FDA a reconsideration of a matter.

Section 10.35 (21 CFR 10.35), issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to Division of Dockets Management), the Commissioner to stay the effective date of any administrative action.

Such a petition must do the following: (1) Identify the decision involved; (2) state the action requested, including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to Division of Dockets Management), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

In the **Federal Register** of December 30, 2008 (73 FR 79885), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	162	3	486	12	5,832
10.33	4	2	8	10	80
10.35	7	2	14	10	140
10.85	2	1	2	16	32
Total					6,084

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on agency records and experience over the past 3 years. In 2007, FDA received approximately 162 citizen petitions (§ 10.30), 4 administrative reconsiderations of action (§ 10.33), 7 administrative stays of action (§ 10.35), and 2 advisory opinions (§ 10.85).

Dated: March 3, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–4972 Filed 3–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 1 and 2, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line,

1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 1 and 2, 2009, two different new drug applications (NDAs), proposed for the treatment of hyperglycemia in adults with type 2 diabetes mellitus will be discussed. On April 1, 2009, the committee will discuss NDA 22–350, saxagliptin tablets, Bristol-Myers Squibb, and on April 2, 2009, the committee will discuss NDA 22–341, liraglutide injection, Novo Nordisk, Inc.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 23, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 16, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 19, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 3, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–5024 Filed 3–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 31, 2009, from 8:30 a.m. to 4:30 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss supplemental biologics license application (sBLA) 125085/169, AVASTIN (bevacizumab), Genentech, Inc., proposed indication as single agent for the treatment of previously treated glioblastoma multiforme.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 20, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 16, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 17, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 4, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–5058 Filed 3–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, 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.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: March 30, 2009.

Time: 9 a.m. to 4:30 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892. 301–402–1770.

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://www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4974 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Gender, Youth and HIV.

Date: April 3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01 Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4976 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Pathogenesis of Rett Syndrome''.

Date: April 3, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, Md 20892. (301) 496–1485, *changn@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility LoanRepayment Program, National Institutes of Health, HHS)

Dated: March 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4978 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Nervous System Molecular Mechanisms.

Date: April 3, 2009.

Time: 2:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4981 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Community Based Participatory Research.

Date: March 25, 2009.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Cooperative Drug Discovery Development Groups for the Treatment of Mental Disorders, Drug or Alcohol Addiction.

Date: March 25, 2009.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVC Conflicts.

Date: April 1, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, MentalHealth National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4979 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, Loan Repayment Program (L30-L40) Review.

Date: April 21, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zoe E. Huang, M.D., Scientific Review Officer, Extramural

Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4975 Filed 3–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Enhancing Substance Abuse Treatment Services To Address Hepatitis Infection Among Intravenous Drug Users Hepatitis Testing and Vaccine Tracking Form—In Use Without OMB Approval

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) is requesting an OMB approval of a Hepatitis Testing and Vaccine Tracking Form for the prevention of Viral Hepatitis in patients in designated OTPs. This form is similar to the Minority AIDS Initiative HIV Rapid Testing Clinical Form that received an emergency approval (OMB No. 0930–0295) in September 2008.

This form will allow SAMHSA/CSAT to collect essential Clinical information that will be used for quality assurance, quality performance and product monitoring on approximately 264 Rapid Hepatitis C Test kits and 10,628 doses of hepatitis vaccine (Twinrix, HAV, or HBV). The above kits and vaccines will be provided to designated OTPs serving the minority population in their communities. The information collected on the Form will solicit and reflect the following information:

- Demographics (age, gender, ethnicity) of designated OTP site.
- History (screening) of Hepatitis C exposure.
- Results of Rapid Hepatitis C Testing (Kit) and follow-up information.
- Service provided (type of vaccine given) Divalent vaccine (Twinrix—combination HAV and HBV) or Monovalent vaccine (HAV or/and HBV).
- Substance abuse treatment outcomes (information regarding the beginning, continuing or completion of vaccination series).
- Type of referral services indicated (*i.e.*, Gastroenterology, TB; Mental Health, Counseling, Reproductive/Prenatal, etc.).

This program is authorized under Section 509 of the Public Health Service (PHS) Act [42 U.S.C. 290bb-2].

The purpose of the form is to increase the screening and reporting of viral hepatitis in high risk minorities in OTPs. The information collected will allow SAMHSA to address the increased morbidity and mortality of hepatitis in minorities being treated for drug addiction.

The SAMHSA/CSAT Hepatitis Testing and Vaccine Tracking Form would support quality of care, provide minimum but adequate clinical and product monitoring, and provide appropriate safeguards against fraud, waste and abuse of Federal funds.

The table below reflects the annualized hourly burden.

Number of respondents screened	Responses/ respondent	Burden hours	Total burden hours
50,000	1	0.05	2,500

Written comments and recommendations concerning the proposed information collection should be sent by April 9, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: February 27, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–5029 Filed 3–9–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–102, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; OMB Control No. 1615–0079.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 11, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, add the OMB Control Number 1615–0079 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–102. Should USCIS decide to revise the Form I–102 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then

have 30 days to comment on any revisions to the Form I–102.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Nonimmigrants temporarily residing in the United States use this form to request a replacement of his or her arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

You may also contact us at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: March 4, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–4977 Filed 3–9–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0090]

Agency Information Collection Activities: Form I–687, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–687, Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 11, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0090 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I–687. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract: Primary:* Individuals and Households. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 116,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

You may also contact us at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

March 4, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–4980 Filed 3–9–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: I–694, Extension of a Currently Approved Information Collection; Comment Request

ACTION: *60-Day Notice of Information Collection Under Review:* Form I–694, Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act; OMB Control No. 1615–0034.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 11, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control No. 1615–0034 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–694. Should USCIS decide to revise the Form I–694 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–694.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 and 245A of the Immigration and Nationality Act.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I–694. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or households. This information collection will be used by USCIS in considering appeals of denials or termination of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act, and related applications for waiver of grounds of inadmissibility.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 1,192 respondents at 30 minutes (.50) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 596 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp*.

You may also contact us at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: March 4, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–5006 Filed 3–9–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Renewal of Information Collection: OMB Control Number 1084–0010, Claim for Relocation Payments—Residential, DI–381 and Claim for Relocation Payments—Nonresidential, DI–382

AGENCY: Office of the Secretary, Office of Acquisition and Property Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management announces that it has submitted a request for renewal of approval of this information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by April 9, 2009, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile, at (202) 395–6566, or e-mail at *OIRA_DOCKET@omb.eop.gov*, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1084–0010). Also, please send a copy of your comments to Mary Heying, Office of Acquisition and Property Management, 1849 C Street, NW., MS 2607 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 219–4244. The e-mail address is *mary_heying@ios.doi.gov*. Individuals providing comments should reference Relocation Payments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments should be directed to Mary Heying, Office of Acquisition and Property Management, 1849 C Street, NW., MS 2607 MIB, Washington, DC 20240. You may also request additional information by facsimile at (202) 219–4244, or by e-mail at *mary_heying@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Abstract

Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13),

require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Acquisition and Property Management has submitted to OMB for renewal. Form DI–381, Claim For Relocation Payments—Residential; and DI–382, Claim For Relocation Payments—Nonresidential, provide the means for the applicant to present allowable moving expenses and certify to occupancy status, after having been displaced because of Federal acquisition of their real property.

II. Method of Collection

Individuals or businesses displaced by Federal acquisition of their real property will submit either Form DI–381 or DI–382, respectively. These forms give the claimant the opportunity to provide the information needed to determine the amount of the financial claim which would remunerate the individual or business for costs incurred as a result of the loss of the property as well as certain moving costs and other associated costs. For example, the residential Form provides for itemization of down payment and incidental expenses. The non-residential Form provides for itemization of the type of concern or business, moving and storage expenses, reasonable search expenses, direct loss of personal property, and reestablishment expenses, for example. Without such forms, it would not be possible to acquire the precise information associated with the permissible reimbursements permitted under the statute.

III. Data

(1) *Title:* Claim for Relocation Payments—Residential, DI–381; and Claim For Relocation Payments—Nonresidential, DI–382.

OMB Control Number: 1084–0010.

Type of Review: Information Collection: Renewal.

Affected Entities: Individuals, Businesses.

Estimated Annual Number of Respondents: DI–381: 50, DI–382: 35.

Frequency of Response: Once per relocation.

(2) *Annual Reporting and Record Keeping Burden:*

Estimated Combined Total Number of Responses Annually: 85.

Estimated Burden per Response: 49 minutes (.82 hours per response).

Total Annual Reporting: 70 hours.

(3) *Description of the Need and Use of the Information:* This information will provide the basis upon which required reimbursements to individuals or nonresidents displaced by Federal acquisition of real property should be made, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970, as amended, and the implementing Final Rule issued by the Department of Transportation, 49 CFR Part 24.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on October 9, 2008 (73 FR 59643). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of Acquisition and Property management at the above address. Valid photo identification is required for entry into the Department of the Interior.

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 Office of Management and Budget control number.

Dated: March 4, 2009.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. E9–5078 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–40256, F–40257, F–40258; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Chicken, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 8 S., R. 28 E.,
Secs. 2 to 11, inclusive;
Secs. 14 to 18, inclusive.

Containing approximately 9,573 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 9, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43

CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–5051 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW153609]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Teton Energy Corporation for Competitive oil and gas lease WYW153609 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW153609 effective September 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–5031 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW154408]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Bestoso Oil and Gas Company for Noncompetitive oil and gas lease WYW154408 for land in Hot Springs County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW154408 effective September 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–5032 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173883]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Kodiak Oil & Gas (USA) Inc., and O'Neal Resources Corporation for Competitive oil and gas lease WYW173883 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW173883 effective August 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–5035 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT922000 L13100000 FI000 257A]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, Utah

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of proposed reinstatement of terminated oil and gas lease, Utah.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), Whiting Oil and Gas Corporation timely filed a petition for reinstatement of oil and gas leases UTU76054 for lands in San Juan County, Utah, and it was accompanied by all required rentals and royalties accruing from September 1, 2008, the date of termination.

FOR FURTHER INFORMATION CONTACT: Kent Hoffman, Deputy State Director, Division of Lands and Minerals at (801) 539–4080, or Becky Hammond, Chief, Branch of Fluid Minerals at (801) 539–4039.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the leases has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 2008, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Dated: February 20, 2009.

Selma Sierra,

State Director.

[FR Doc. E9–5076 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKA01300–14300000.ER0000; AA–091143]

Notice of Realty Action: Recreation and Public Purposes Lease, Anchorage, AK

Correction

In notice document E9–4488 beginning on page 9263 in the issue of Tuesday, March 3, 2009, make the following correction:

On page 9263, the subject should read as it appears above.

[FR Doc. Z9–4488 Filed 3–9–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008-MRM–0031]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under title 30 of the Code of Federal Regulations (CFR) parts 202, 204, and 206. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. We changed the title of this ICR to reflect the consolidation of two ICRs relating to Federal oil and gas valuation. The new title of this ICR is ''30 CFR Parts 202, 204, and 206, Federal Oil and Gas Valuation.'' In this extension, we are consolidating the following ICRs, which allow programwide review of Federal oil and gas leases:

• 1010–0136, previously titled ''30 CFR Part 202—Royalties, Subpart C—Federal and Indian Oil and Subpart D—Federal Gas; and Part 206—Product Valuation, Subpart C—Federal Oil and Subpart D—Federal Gas;'' and

• 1010–0155, previously titled ''30 CFR Part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.''

DATES: Submit written comments on or before April 9, 2009.

ADDRESSES: Submit written comments by either FAX (202) 395–7245 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0136).

Please submit copies of your comments to MMS by one of the following methods:

• Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0031'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.

• Mail comments to Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 300B2, Denver, Colorado 80225. Please reference ICR 1010–0136 in your comments.

• Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0136 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or e-mail *armand.southall@mms.gov.* You may also contact Armand Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 202, 204, and 206, Federal Oil and Gas Valuation.

OMB Control Number: 1010–0136.

Bureau Form Number: Form MMS–4393.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds

collected in accordance with applicable laws. Public laws pertaining to mineral leases on Federal and Indian lands are posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm*.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals.

We use the information collected in this ICR to ensure that royalty is accurately valued and appropriately paid on oil and gas produced from Federal onshore and offshore leases. Please refer to the chart for all reporting requirements and associated burden hours. All data submitted is subject to subsequent audit and adjustment.

Federal Oil and Gas Valuation Regulations

The valuation regulations at 30 CFR part 206, subparts C and D, mandate that companies collect and/or submit information used to value their Federal oil and gas, including transportation and processing regulatory allowance limit information. Companies report certain data on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140). The information requested is the minimum necessary to carry out our mission and places the least possible burden on respondents. If MMS does not collect this information, both Federal and state governments may suffer a loss of royalties.

Transportation and Processing Regulatory Allowance Limits

Lessees may deduct the reasonable, actual costs of transportation and processing from Federal royalties. Lessees who request approval to exceed the regulatory allowance limits are required to supply information in order to obtain these benefits.

Regulatory Allowance Limit for Transportation: Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable, actual costs of transporting the royalty portion of produced oil and gas from the lease to a processing or sales point not in the immediate lease area. For oil and gas, regulations establish the allowable limit on transportation allowance deductions at 50 percent of the value of the oil or gas.

Regulatory Allowance Limit for Processing: When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. Regulations establish the allowable limit on processing allowance deductions at 66⅔ percent of the value of each gas plant product.

Request To Exceed Regulatory Allowance Limitation, Form MMS–4393

Lessees may request to exceed regulatory limitations. Upon proper application from the lessee, we may approve an oil or gas transportation allowance in excess of 50 percent or a gas processing allowance in excess of 66⅔ percent on Federal leases. To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS–4393. On this form, lessees provide the data necessary to identify the properties and time periods for which the lessee is requesting to exceed the regulatory limits. The MMS verifies that these costs actually exceed regulatory allowance limits. Companies report allowances on Form MMS–4393 for both Federal and Indian leases. Burden hours for completion of Form MMS–4393 for Indian leases are included in OMB Control Number 1010–0103.

Accounting and Auditing Relief for Marginal Properties

In 2004, we amended our regulations to comply with section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The new regulations provide guidance for lessees and designees seeking accounting and auditing relief for qualifying Federal marginal properties. There are two types of relief: (1) Cumulative royalty reports and payments relief; and (2) other relief. Under 30 CFR 204.202, MMS requires notification from lessees who request to take the cumulative royalty reporting and payment relief option. Under 30 CFR 204.203, MMS requires a relief request from lessees who want to obtain any other type of accounting and auditing relief.

A state may decide in advance if it will allow either or both relief options for each particular year and must notify the MRM Associate Director, in writing of its decision. If a state does not notify MMS in writing, then MMS will deem that the state has decided not to allow either or both relief options. After consulting with the state concerned, we will approve, deny, or modify requests in writing. Under the regulations, both MMS and the state concerned must approve any accounting and auditing relief granted for a marginal property.

OMB Approval

We are requesting OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are included in this information collection.

For information collections relating to valuation requirements, responses are mandatory. For the remaining information collections in this ICR, responses are required to obtain benefits: only those lessees who request approval to exceed the regulatory limits on transportation and processing allowances or to obtain the benefits of accounting and auditing relief for marginal properties must supply this information.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 94 Federal lessees/designees and 4 states.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 21,055 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 202—ROYALTIES Subpart C—Federal and Indian Oil				
§ 202.101 Standards for reporting and paying royalties.				
202.101	202.101 Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F.	Burden covered under OMB Control Number 1010–0140.		
Subpart D—Federal Gas				
§ 202.152 Standards for reporting and paying royalties on gas.				
202.152(a) and (b)	202.152(a)(1) If you are responsible for reporting production or royalties you must: (i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation; (ii) Report gas volumes in units of 1,000 cubic feet (mcf); and (iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F. (b) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.	Burden covered under OMB Control Number 1010–0140.		
PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES Subpart C—Accounting and Auditing Relief				
§ 204.202 What is the cumulative royalty reports and payments relief option?				
204.202(b)(1)	204.202(b) To use the cumulative royalty reports and payments relief option, you must do all of the following: (1) Notify MMS in writing by January 31 of the calendar year for which you begin taking your relief.	40	1	40
204.202(b)(2) and (b)(3).	204.202(b)(2) Submit your royalty report and payment * * * by the end of February of the year following the calendar year for which you reported annually * * * If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually; (3) Use the sales month prior to the month that you submit your annual report and payment * * * for the entire previous calendar year's production for which you are paying annually.	Burden covered under OMB Control Number 1010–0140.		
204.202(b)(4), (b)(5), (c), (d)(1), (d)(2), (e)(1), and (e)(2).	204.202(b) To use the cumulative royalty reports and payments relief option, you must: (4) Report one line of cumulative royalty information on Form MMS–2014 for the calendar year * * * and (5) Report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property production. (c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest * * * from the date your payment was due under this section until the date MMS receives it. (d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must: (1) Pay MMS late payment interest determined under 30 CFR 218.54; (2) Amend your Form MMS–2014. (e) If you dispose of your ownership interest in a marginal property for which you have taken relief * * * you must: (1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and (2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest * * * from the date the payment was due.	Burden covered under OMB Control Number 1010–0140.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	§ 204.203 What is the other relief option?			
204.203(b), 204.205(a) and (b), and 204.206(a)(3)(i) and (b)(1).	204.203(b) You must request approval from MMS * * * before taking relief under this option.	200	1	200
	§ 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?			
204.208 (c)(1), (d)(1), and (e)	204.208(c) If a State decides * * * that it will or will not allow one or both of the relief options * * * within 30 days * * * the State must: (1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow or not allow one or both of the relief options. (d) If a State decides in advance * * * that it will not allow one or both of the relief options * * * the State must: (1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow one or both of the relief options. (e) If a State does not notify MMS * * * the State will be deemed to have decided not to allow either of the relief options.	40	4	160
	§ 204.209 What if a property ceases to qualify for relief obtained under this subpart?			
204.209(b)	204.209(b) If a property is no longer eligible for relief * * * the relief for the property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for the property has terminated.	6	1	6
	§ 204.210 What if a property is approved as part of a nonqualifying agreement?			
204.210(c) and (d)	204.210(c) * * * the volumes on which you report and pay royalty * * * must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM * * * Report and pay royalties for your production using the procedures in § 204.202(b). (d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 204.202(b), you will owe late payment interest determined under 30 CFR 218.54 from the date your payment was due under § 204.202(b)(2) until the date MMS receives it.	Burden covered under OMB Control Number 1010–0140.		
	§ 204.214(b) Is minimum royalty due on a property for which I took relief?			
204.214(b)(1) and (b)(2)	204.214(b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and: (1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or, (2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.	Burden covered under OMB Control Number 1010–0140.		
	Accounting and Auditing Relief Subtotal		7	406
	PART 206—PRODUCT VALUATION **Subpart C—Federal Oil**			
	§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?			
206.102(e)(1)	206.102(e) If you value oil under paragraph (a) of this section: (1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	§ 206.103 How do I value oil that is not sold under an arm's-length contract?			
206.103(a)	206.103 This section explains how to value oil that you may not value under § 206.102 or that elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval. (a) Production from leases in California or Alaska. Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month. (1) To calculate the daily mean spot price. (2) Use only the days. (3) You must adjust the value.	45	5	225
206.103(a)(4)	206.103(a)(4) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years,	8	2	16
206.103(b)(1)	206.103(b) Production from leases in the Rocky Mountain Region. * * * (1) If you have an MMS-approved tendering program, you must value oil.	400	2	800
206.103(b)(1)(ii)	206.103(b)(1)(ii) If you do not have an MMS-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section.	400	2	800
206.103(b)(4)	206.103(b)(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.	400	2	800
206.103(c)(1)	206.103(c) Production from leases not located in California, Alaska or the Rocky Mountain Region. (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 206.112.	50	10	500
206.103(e)(1) and (e)(2).	206.103(e) Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value. (1) * * * you may apply to the MMS Director to establish a value representing the market at the refinery if: (2) You must provide adequate documentation and evidence demonstrating the market value at the refinery.	330	2	660
	§ 206.105 What records must I keep to support my calculations of value under this subpart?			
206.105	206.105 If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1010–0140.		
	§ 206.107 How do I request a value determination?			
206.107(a)	206.107(a) You may request a value determination from MMS.	880	3	2,640
	§ 206.109 When may I take a transportation allowance in determining value?			
206.109(c)(2)	206.109(c) Limits on transportation allowances. (2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section * * * Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.	8	1	8
	§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?			
206.110(a)	206.110(a) * * * You must be able to demonstrate that you or your affiliate's contract is at arm's length.	AUDIT PROCESS. See note.		
206.110(d)(3)	206.110(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined * * * (3) You may propose to MMS a cost allocation method.	330	2	660

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.110(e)	206.110(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.	330	1	330
206.110(e)(1) and (e)(2).	206.110(e)(1) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2014. (2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.110(g)(2)	206.110(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, * * *	330	1	330
	(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.			
§ 206.111 How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff?				
206.111(g)	206.111(g) To compute depreciation, you may elect to use either * * * After you make an election, you may not change methods without MMS approval.	330	1	330
206.111(k)(2)	206.111(k)(2) You may propose to MMS a cost allocation method on the basis of the values.	330	1	330
206.111(l)(1) and (l)(3)	206.111(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS * * * (3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	330	1	330
206.111(l)(2)	206.111(l)(2) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2104 for the months that you used the rejected method and pay any additional royalty and interest due.	Burden covered under OMB Control Number 1010–0140.		
§ 206.112 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?				
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * under an exchange agreement that is not at arm's length, you must obtain approval from MMS for a location and quality differential.	330	1	330
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * If MMS prescribes a different differential, you must apply * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit.	330	2	660
206.112(a)(3) and (a)(4).	206.112(a)(3) If you transport or exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows: (4) If you transport or exchange (or both transport and exchange) less than 20 percent of your crude oil produced from the lease between the lease and a market center, you must propose to MMS an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center * * * If MMS prescribes a different adjustment. * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit.	330	4	1,320
206.112(b)(3)	206.112(b)(3) * * * you may propose an alternative differential to MMS * * * If MMS prescribes a different differential * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit.	330	4	1,320

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.112(c)(2)	206.112(c)(2) * * * If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content, unless MMS approves a higher adjustment.	330	2	660
	§ 206.114 What are my reporting requirements under an arm's-length transportation contract?			
206.114	206.114 You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1010–0140.		
	MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	AUDIT PROCESS. See note.		
	§ 206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?			
206.115(a)	206.115(a) You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1010–0140.		
206.115(c)	206.115(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction.	AUDIT PROCESS. See note.		
	Subpart D—Federal Gas			
	§ 206.152 Valuation standards-unprocessed gas.			
206.152(b)(1)(i) and (b)(1)(iii).	206.152(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
206.152(b)(2)	206.152(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract;	330	1	330
206.152(b)(3)	206.152(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.	AUDIT PROCESS. See note.		
206.152(e)(1)	206.152(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1010–0140.		
206.152(e)(2)	206.152(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	AUDIT PROCESS. See note.		
206.152(e)(3)	206.152(e)(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section.	330	2	660
206.152(g)	206.152(g) The lessee may request a value determination from MMS * * * The lessee shall submit all available data relevant to its proposal.	660	3	1,980
	§ 206.153 Valuation standards-processed gas.			
206.153(b)(1)(i) and (b)(1)(iii).	206.153(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
	(iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.			
206.153(b)(2)	206.153(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract;	330	1	330

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.153(b)(3)	206.153(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.	AUDIT PROCESS. See note.		
206.153(e)(1)	206.153(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1010–0140.		
206.153(e)(2)	206.153(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.	AUDIT PROCESS. See note.		
206.153(e)(3)	206.153(e)(2) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section.	330	2	660
206.153(g)	206.153(g) The lessee may request a value determination from MMS * * * The lessee shall submit all available data relevant to its proposal.	330	4	1,320
	§ 206.154 Determination of quantities and qualities for computing royalties.			
206.154(c)(4)	206.154(c)(4) * * * A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease.	330	1	330
	§ 206.156 Transportation allowances—general.			
206.156(c)(3)	206.156(c)(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraphs (c)(1) and (c)(2) of this section * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination.	8	3	24
	§ 206.157 Determination of transportation allowances.			
206.157(a)(1)(i)	206.157(a) Arm's-length transportation contracts. (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
	The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.157(a)(1)(iii)	206.157(a)(1)(iii) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs	AUDIT PROCESS. See note.		
206.157(a)(2)(ii)	206.157(a)(2)(ii) * * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	330	1	330
206.157(a)(3)	206.157(a)(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all relevant data to support its proposal.	330	1	330
206.157(a)(5)	206.157(a)(5) * * * The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.	100	1	100
206.157(b)(1)	206.157(b) Non-arm's-length or no contract. (1) The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.157(b)(2)(iv) and (b)(2)(iv)(A).	206.157(b)(2)(iv) After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS. (A) After an election is made, the lessee may not change methods without MMS approval.	100	1	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.157(b)(3)(i)	206.157(b)(3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.	100	1	100
206.157(b)(3)(ii)	206.157(b)(3)(ii) * * * the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported.	100	1	100
206.157(b)(4)	206.157(b)(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal.	100	1	100
206.157(b)(5)	206.157(b)(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.	100	1	100
206.157(c)(1)(i)	206.157(c) Reporting Requirements. (1) Arm's-length contracts. (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	Burden covered under OMB Control Number 1010–0140.		
206.157(c)(1)(ii)	206.157(c)(1)(ii) The MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	AUDIT PROCESS. See note.		
206.157(c)(2)(i)	206.157(c)(2) Non-arm's-length or no contract. (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	Burden covered under OMB Control Number 1010–0140.		
206.157(c)(2)(iii)	206.157(c)(2)(iii) The MMS may require you to submit all data used to calculate the allowance deduction.	AUDIT PROCESS. See note.		
206.157(e)(2), (e)(3), and (f)(1).	206.157(e) Adjustments. (2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.	Burden covered under OMB Control Number 1010–0140.		
	(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payments, in accordance with instructions provided by MMS.			
	(f) Allowable costs in determining transportation allowances. * * * (1) Firm demand charges paid to pipelines * * * if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify Form MMS–2014 by the amount received or credited for the affected reporting period and pay any resulting royalty and late payment interest due.			
	§ 206.158 Processing allowances-general.			
206.158(c)(3)	206.158(c)(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination. * * *	8	12	96
206.158(d)(2)(i)	206.158(d)(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs.	40	2	80
206.158(d)(2)(ii)	206.158(d)(2)(ii) * * * to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.	Burden covered under OMB Control Number 1010–0140.		
	§ 206.159 Determination of processing allowances.			
206.159(a)(1)(i)	206.159(a) Arm's-length processing contracts.(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
	The lessee must claim a processing allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202, 204, and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.159(a)(1)(iii)	206.159(a)(1)(iii) * * * When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.	AUDIT PROCESS. See note.		
206.159(a)(3)	206.159(a)(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal.	330	1	330
206.159(b)(1)	206.159(b) Non-arm's-length or no contract. (1) * * * The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.159(b)(2)(iv) and (b)(2)(iv)(A).	206.159(b)(2)(iv) * * * When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the alternative without approval of the MMS.(A) * * * After an election is made, the lessee may not change methods without MMS approval.	100	1	100
206.159(b)(4)	206.159(b)(4) A lessee may apply to MMS for an exception from the requirements that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section.	100	1	100
206.159(c)(1)(i)	206.159(c) Reporting requirements-(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.159(c)(1)(ii)	206.159(c)(1)(ii) The MMS may require that a lessee submit arm's-length processing contracts and related documents.	AUDIT PROCESS. See note.		
206.159(c)(2)(i)	206.159(c)(2) Non-arm's-length or no contract.(i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
206.159(c)(2)(iii)	206.159(c)(2)(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction.	AUDIT PROCESS. See note.		
206.159(e)(2) and (e)(3).	206.159(e) Adjustments.	Burden covered under OMB Control Number 1010–0140.		
	(2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS.			
Oil and Gas Valuation Subtotal		.....	91	20,649
TOTAL		.....	98	21,055

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on August 15, 2008 (73 FR 47969), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We

received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 9, 2009.

Public Comment Policy: We will post all comments in response to this notice at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: March 4, 2009.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. E9–5077 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0061

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information under 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program (SOAP). This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0061.

DATES: Comments on the proposed information collection activity must be received by May 11, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or at the e-mail address listed above.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. This collection is contained in 30 CFR Part 795—Permanent Regulatory Program Small Operator Assistance Program. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

SUMMARY: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Frequency of Collection: Once per application.

Total Annual Responses: 4.

Total Annual Burden Hours: 93 hours.

Dated: March 3, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–4939 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Improvements to the Rio Grande Rectification Project in El Paso and Hudspeth Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508), and the United States Section, International Boundary and Water Commission's (USIBWC) Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Final Environmental Assessment and FONSI for Improvements to the Rio Grande Rectification Project (RGRP) located in El Paso and Hudspeth Counties, Texas are available.

FOR FURTHER INFORMATION CONTACT: Lisa Santana, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. *Telephone:* (915)

832–4707; *e-mail: lisasantana@ibwc.gov*.

DATES: The Final EA and FONSI will be available March 13, 2009.

SUPPLEMENTARY INFORMATION:

Background

The RGRP is a flood control and water delivery project completed in 1938 along the Rio Grande in El Paso and Hudspeth Counties, Texas. The RGRP, extending approximately 91 miles from El Paso to Fort Quitman, consists of a flood control levee system along the United States and Mexico margins of the Rio Grande, a maintained floodway enclosed by the levee system, and a dredged river channel.

The USIBWC identified the RGRP as a priority area to improve flood containment and restore normal flow capacity of the river channel. Flood control is the core mission of the RGRP whose economic benefits have been estimated at over $140 million in terms of protection of residential, industrial, and commercial structures, and agricultural use. The RGRP was also built to ensure efficient delivery of water for irrigation and other uses in the United States and Mexico. A need has been identified to restore normal flow capacity of the river, reduced by sediment deposition, to improve irrigation water delivery and comply with existing agreements between the two countries.

Proposed Action

Alternatives to the Proposed Action

The proposed action to improve functionality of the RGRP has two components, raising the levee system along various river segments to meet current flood control requirements, and dredging the river channel to restore normal flow capacity.

To increase flood containment capacity, fill material would be added on top of the levee system to bring height to its original design specifications, or to meet current flood control requirements. Various sections of the RGRP levee system along the United States margin of the Rio Grande would be raised up to 4 feet, using compatible fill material obtained from commercial sources. Height increase would result in expansion of the levee footprint, up to a maximum of 12 feet on each side of the levee. The expansion would take place along the levee service corridor currently utilized for levee maintenance, and entirely within the RGRP right-of-way. Excavation outside the levee structure is not an anticipated need.

Normal flow capacity of the river, reduced by sediment deposition, would be restored to ensure efficient water delivery and comply with existing agreements between the two countries. Dredging to be conducted by the USIBWC would cover three Rio Grande segments with an approximate combined length of 45 miles within the RGRP.

Summary of Findings

Pursuant to National Environmental Policy Act (NEPA) guidance (40 Code of Federal Regulations 1500–1508), The President's Council on Environmental Quality issued regulations for NEPA implementation which included provisions for both the content and procedural aspects of the required Environmental Assessment (EA). The USIBWC completed an EA of the potential environmental consequences of improvements to the flood control and water delivery capabilities of the RGRP. The EA, which supports this Finding of No Significant Impact, evaluated the No Action Alternative and Proposed Action.

Potential Environmental Impacts

No Action Alternative

The No Action Alternative was evaluated as the single alternative action to the Proposed Action. The No Action Alternative would retain current conditions of the RGRP in terms of the levee system configuration and sediment deposition in the river channel, with no impacts to biological and cultural resources, land use, or environmental health issues. In terms of flood protection, however, current containment capacity under the No Action Alternative may be insufficient in fully controlling the Rio Grande flooding under severe storm events, with associated risks to personal safety and property. Non-implementation of dredging operations would be detrimental to extensive irrigated areas served by the RGRP due to inefficiency in water deliveries, and would fail to comply with existing boundary agreements between the two countries.

Proposed Action

Biological Resources

Placement of fill material on the levee would affect herbaceous vegetation present on footprint expansion locations and slope of the levee structure. All expansion would take place along the current levee service corridor, limiting vegetation removal to currently managed areas; this plant cover is expected to rapidly re-establish after project completion.

No significant effects are anticipated on wildlife habitat in the vicinity of the levee system. In areas requiring levee footprint expansion, impacts on vegetation would be limited to non-native managed salt cedar habitats and managed old-field habitats along the levee that are of very limited value as wildlife habitat. Levee expansion may remove some habitat for the Species of Concern Burrowing Owl, but levee expansion would occur outside the breeding season of the owls to reduce impacts. Further, the levee expansion will not be in conflict with the burrowing owl management plan. No jurisdictional wetlands are located within the potential levee expansion area, potential bed down areas or disposal sites.

Dredging operations would remove vegetation along some sections of the riverbanks. The river does not contain wetlands, and the vegetation communities along the river are expected to rapidly re-establish after project completion. Dredging is not expected to have an effect on wildlife, including T&E species. Sediment disposal areas are outside the floodway, and sediment disposal would not affect sensitive habitats or wetlands.

Levee expansion would not affect aquatic resources of the Rio Grande. Dredging operations would temporarily affect aquatic habitats and resources; however, dredging operations would occur during low- or no-flow conditions. Therefore, aquatic habitats will be minimally affected by dredging operations.

Levee expansion and dredging operations will not affect unique or sensitive areas, including the Rio Bosque Wetlands Park.

Cultural Resources

Levee footprint expansion would take place along the current levee service corridor. The use of heavy equipment in the floodway and staging areas (including equipment yards and soil storage areas) to add and move soil material for levee expansion may cause soil disturbance several inches deep in the service corridor. Based on the results of previous trenching for geoarchaeological investigations in the project area, the upper 10 to 20 inches (25 to 50 centimeters) of the floodway exhibit evidence of leveling and mixing due to disturbances such as the original construction of the RGRP levee in the 1930s and ongoing floodway maintenance. Archaeological resources occurring up to this depth likely lack physical integrity and context and would most likely not be eligible for the National Register of Historic Places

(NRHP). Levee footprint expansion may cap more deeply buried, intact archaeological resources with soil and gravel and could result in either a potentially beneficial or a potentially adverse effect to these resources. Architectural resources may be adversely affected by expansion of the levee footprint. Potential effects include vibration and ground disturbance from the use of heavy equipment during construction as well as effects caused by alterations to the levee itself; however, the increased height of the levee is not expected to change the flow of water to or from architectural resources. Under NEPA, there will be no significant impacts (i.e., ''unresolvable'' adverse effects under NHPA) to cultural resources because archaeological resources in the APE will be identified and architectural resources will be evaluated for NRHP eligibility prior to implementation of levee footprint expansion. Native American resources, including river access and sensitive Native American plant resources, may be altered by the levee improvements; consultation with the Native American tribes will assist in scheduling construction during times when the river and plants are not being used for ceremonial purposes.

There are no anticipated effects of dredging on archaeological resources. Dredging within the river channel will occur to a depth of 3 feet and simply remove silt deposited since previous dredging was conducted. Movement of heavy equipment used to dredge material from the river may disturb soil several inches deep in the floodway along the river and in staging areas, but no NRHP-eligible resources are expected to occur at that depth. If architectural resources (e.g., lateral drain abutments) are in the areas of dredging operations, they would be avoided and would not be affected. Native American resources, including river access and sensitive Native American plant resources, could be adversely affected by dredging operations.

Intensive archaeological and architectural surveys to identify and evaluate cultural resources in the project area will be conducted in accordance with Texas State Historic Preservation Office (SHPO), (Texas Historical Commission [THC]), requirements. Cultural resources in the project area may include archaeological sites as well as levee-related resources, irrigation-related resources, roadway bridges, and culverts.

Water Resources

Improvements to the RGRP levee would increase flood containment capacity with a negligible increase in floodwater surface elevation. Levee footprint expansion would not affect water supply or management, agricultural water uses, or water quality.

Dredging operations would improve water flow within the river. Water supply and water management would be improved by making delivery of irrigation water more efficient. Dredging operations would temporarily affect water quality, but effects would attenuate with distance and would subside at the conclusion of the operations. Dredging operations would be scheduled to occur during low flow or no flow conditions to minimize impacts to water quality.

Land Use

Footprint levee expansion, where required, would take place completely within the existing right-of-way and along the levee service corridor. No urban or agricultural lands would be affected. Dredging operations, including equipment staging, would occur within the existing USIBWC right-of way outside the floodway. Sediment disposal would occur at pre-selected sites along the levee service corridor, outside the floodway, or on farmland by request. Dredged sediment disposed of on farmland could be used as a soil amendment and improve drainage in agricultural fields.

Community Resources

Residents and property along the RGRP would benefit from the continued flood protection. The influx of federal funds into El Paso and Hudspeth Counties from levee improvements and dredging operations would also have a positive local economic impact, largely limited to the construction period. The benefit would be small for El Paso County given its large economic base, less than 1% of the annual county employment, income and sales values. The effect would be more substantial in Hudspeth County because of its small population. No adverse impacts to disproportionately high minority and low-income populations were identified for construction activities. Moderate utilization of public roads would be required during construction, with a temporary increase in access road for equipment mobilization to staging areas.

Environmental Health Issues

Estimated air emissions of five criteria pollutants during construction would be discontinuous and represent less than 0.3 percent of the annual emissions inventory for El Paso County, and less than 1.5 percent for Hudspeth County. There would be a moderate increase in ambient noise levels due to construction activities. Neither long-term nor regular exposure is expected above noise threshold values. A database search indicated that no waste storage and disposal sites were within proposed work areas, and none would affect, or be affected, by the proposed RGRP improvements.

Best Management Practices

Best management practices and mitigation measures would be implemented as part of the Proposed Action to minimize the potential for impacts to natural resources, and mitigation measures used compensate for potential adverse effects. Best managements practices during construction would include use of sediment barriers and soil wetting to minimize erosion and dust.

Levee expansion alignment would be optimized, to the extent possible, to avoid impacts to riparian native wooded vegetation, including mature woody trees, if present. The project would comply with U.S. Environmental Protection Agency (USEPA) requirements for construction and equipment staging areas to avoid impacts on water quality and other aquatic resources. Continued coordination with the Texas Parks and Wildlife Department (TPWD) will be necessary for protection of burrowing owl nesting locations, including schedule modification of levee improvement operations. To protect wildlife, construction activities would be scheduled to occur, to the extent possible, outside the March 1st to August 31st bird migratory season as required by the United States Migratory Bird Treaty Act.

Availability: The Final Environmental Assessment and Finding of No Significant Impact are available at the USIBWC homepage at *http://www.ibwc.state.gov/Organization/Environmental/reports_studies.html*.

Dated: March 6, 2009.

Robert McCarthy,

General Counsel.

[FR Doc. E9–5065 Filed 3–9–09; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Review)]

Barium Carbonate From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on barium carbonate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 2, 2008 (73 FR 51315) and determined on December 8, 2008 that it would conduct an expedited review (73 FR 77058, December 18, 2008).

The Commission transmitted its determination in this review to the Secretary of Commerce on January 30, 2009. The views of the Commission are contained in USITC Publication 4060 (January 2009), entitled *Barium Carbonate from China: Investigation No. 731–TA–1020 (Review).*

Issued: March 4, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–5017 Filed 3–9–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–669]

In the Matter of Certain Optoelectronic Devices, Components Thereof, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 3, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore; Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore; and Avago Technologies Ltd. of San Jose, California. Letters supplementing the Complaint were filed on February 12, 18, and 25, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optoelectronic devices, components thereof, and products containing the same that infringe certain claims of U.S. Patent Nos. 5,359,447 and 5,761,229. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 3, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain optoelectronic devices, components thereof, or products containing the same that infringe one or more of claims 1–6 of U.S. Patent No. 5,359,447 and claim 8 of U.S. Patent No. 5,761,229, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Avago Technologies Fiber IP, (Singapore) Pte. Ltd., 1 Yishun Avenue 7, Singapore 768923.

Avago Technologies General IP, (Singapore) Pte. Ltd., 1 Yishun Avenue 7, Singapore 768923.

Avago Technologies Ltd., 350 West Trimble Road, Building 90, San Jose, California 95131.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Emcore Corporation, 10420 Research Road SE., Albuquerque, New Mexico 87123.

(c) The Commission investigative attorney, party to this investigation, is Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: March 5, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–5016 Filed 3–9–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. InBev NV/SA, InBev USA LLC, and Anheuser-Busch Companies, Inc.; Response to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed Final Judgment in *United States* v. *InBev NV/SA, InBev USA LLC, and Anheuser-Busch Companies, Inc.*, Civil Action No. 1:08–cv–1965 and the response to the comments. On November 14, 2008, the United States filed a Complaint alleging that the proposed merger between InBev NV/SA (''InBev'') and Anheuser-Busch Companies, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by substantially reducing competition for the sale of beer in the Buffalo, Rochester, and Syracuse, New York, metropolitan areas. The proposed Final Judgment, filed at the same time as the Complaint, requires InBev to divest InBev USA LLC d/b/a Labatt USA and grant a perpetual license to the acquirer to brew and sell Labatt brand beer for consumption throughout the United States. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), public comment was invited within the statutory 60-day comment period. Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement, Public Comments, the United States' Response to the Comments, and other materials are currently available for inspection in Suite 1010 of the Antitrust Division, Department of Justice, 450 5th Street, NW., Washington, DC 20530, telephone: (202) 514–2481, on the Department of Justice's website (*http://www.usdoj.gov/atr*), and the Office of the Clerk of the United States District Court for the District of the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee set by Department of Justice Regulations.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. *InBev N.V./S.A., InBev USA LLC, and Anheuser-Busch Companies, Inc.* Defendants.

CASE NO: 1:08–cv–01965 (JR)

JUDGE: Robertson, James

Response of Plaintiff United States To *Public Comments On the Proposed Final Judgment*

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States hereby files comments received from members of the public concerning the proposed Final Judgment in this case and the responses by the United States to these comments. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on November 14, 2008, alleging that the proposed merger of InBev N.V./S.A. (''InBev'') and Anheuser-Busch Companies, Inc. (''Anheuser-Busch'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Hold Separate Stipulation and Order (''Stipulation'') signed by the United States and Defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act.[1] Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on November 14, 2008; published the proposed Final Judgment and CIS in the **Federal Register** on November 25, 2008, *see* 73 FR 71682 (2008); and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on December 7, 2008, and ending on December 13, 2008. The 60-day period for public comments ended on February 11, 2009, and the United States received four comments as described below and attached hereto.

I. The United States' Investigation And The Proposed Final Judgment

On July 13, 2008, InBev and Anheuser-Busch entered into an agreement, whereby InBev agreed to acquire all of the voting securities of Anheuser-Busch. The United States Department of Justice (the ''Department'') conducted an extensive, detailed investigation into the competitive effects of the proposed transaction. As part of this investigation, the Department obtained and considered more than 500,000 pages of material. The Department deposed officials of Anheuser-Busch and Inbev and interviewed beer wholesalers, retail customers, brewers, and other individuals with knowledge of the industry.

After conducting a detailed analysis of the acquisition, the Department concluded that the combination of InBev and Anheuser-Busch likely would substantially lessen competition for the sale of beer in the Buffalo, Rochester, and Syracuse, New York, areas. In contrast to InBev's small (less than 2 percent) share in most parts of the country, InBev's Labatt brand accounts for a significant portion of beer sales in the Buffalo, Rochester, and Syracuse areas. Anheuser-Busch beers and InBev's Labatt brand beers collectively account for over 40 percent of the total beer sales in the Buffalo, Rochester, and Syracuse areas.

As more fully explained in the CIS, the Stipulation and proposed Final Judgment in this case are designed to preserve competition in the sale of beer in the Buffalo, Rochester, and Syracuse areas by requiring InBev to divest InBev USA d/b/a Labatt USA (''IUSA'')[2] and all of the real and intellectual property rights required to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United

[1] The merger closed on November 14, 2008. In keeping with the United States' standard practice, neither the Stipulation nor the proposed Final Judgment prohibited the closing of the merger. *See* ABA Section of Antitrust Law, *Antitrust Law Developments* 406 (6th ed. 2007) (noting that ''[t]he Federal Trade Commission (as well as the Department of Justice) generally will permit the underlying transaction to close during the notice and comment period''). Such a prohibition could interfere with many time-sensitive deals and prevent or delay the realization of substantial efficiencies.

[2] The Divestiture Assets do not include certain assets of IUSA (e.g., books, records, and data) that relate solely to the sale of non-Labatt brand beer. *See* Proposed Final Judgment II.F(iii), (iv).

States (''Divestiture Assets''). *See* Proposed Final Judgment II.F. The Stipulation and proposed Final Judgment also require InBev to take several steps to assist the acquirer in providing prompt and effective competition in the Buffalo, Rochester, and Syracuse areas, including offering a transitional supply agreement to the acquirer. *Id.* at J. InBev must also provide transition support services as are reasonably necessary for the acquirer to operate the Divestiture Assets. *Id.* at H.

In the Department's judgment, the divestiture of InBev USA and the right to brew and sell Labatt brand beer for consumption in the United States, along with the other requirements contained in the Stipulation and proposed Final Judgment, are sufficient to remedy the anticompetitive effects identified in the Complaint.

II. Standard of Judicial Review

Upon the publication of the Comments and this Response, the United States will have fully complied with the Tunney Act and will move for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e)(1), as amended.

The Tunney Act states that, in making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B); *see generally United States* v. *AT&T Inc.*, 541 F. Supp. 2d 2, 6 n.3 (D.D.C. 2008) (listing factors that the Court must consider when making the public-interest determination); *United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments to the Tunney Act ''effected minimal changes'' to scope of review under Tunney Act, leaving review ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted); *cf. BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

The government is entitled to broad discretion to settle with defendants within the reaches of the public interest. *AT&T Inc.*, 541 F. Supp. 2d at 6. In making its public-interest determination, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, rather than to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006).

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The amendments codified what Congress intended when it passed the Tunney Act in 1974, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11.[4]

III. Summary of Public Comments and the United States' Response

During the 60-day comment period, the United States received comments from (1) ten individuals who filed a complaint in the United States District Court for the Eastern District of Missouri asking the court to enjoin InBev's acquisition of Anheuser-Busch (''Missouri Plaintiffs'')[5]; (2) Esber Beverage Company, RL Lipton Co., and Tri-County Distributing Co. (''Ohio Distributors''); (3) Onondaga Beverage Corporation, Rochester Beer & Beverage Corp., McCraith Beverages, Owasco Beverage Inc., Seneca Beverage Corp, and Rocco J. Testani Inc. (''New York Distributors''); and (4) Tri-County Beverage Company. The comments are attached to this Response.

The commenters raise two main concerns: (A) That the United States should have alleged and remedied harm to competition in a nationwide geographic market, rather than the Buffalo, Rochester, and Syracuse, New York, markets alleged in the United States' Complaint; and (B) that the proposed Final Judgment should contain additional requirements to ensure that competition is preserved in the Buffalo, Rochester, and Syracuse, New York, markets. After reviewing the comments, the United States has determined that the proposed Final Judgment remains in the public interest.

A. Missouri Plaintiffs' Comment that the United States Should Have Alleged and Remedied Additional Competitive Concerns

1. Summary of Comment

The Missouri Plaintiffs argue that ''the Complaint is too narrow [and] the proposed remedies inadequate,'' because the United States did not challenge the merger under a ''potential competition'' theory and did not challenge the legality of a November 2006 import agreement between InBev and Anheuser-Busch. Missouri Plaintiffs Comment at 3–4. In other words, they assert that the United States should have pled and remedied anticompetitive effects asserted by the Missouri Plaintiffs that are neither alleged nor related to the competitive harms identified in the United States' Complaint. Missouri Plaintiffs also assert that this Court should ''inquire'' about why the United States did not produce any ''determinative'' documents, as defined by the Tunney Act, 15 U.S.C. 16(b), and suggest that an import agreement between InBev and Anheuser-Busch is in fact such a determinative document. Missouri Plaintiffs Comment at 15–16.

2. The United States' Response

a. Competitive Concerns Not Addressed in the Complaint

Missouri Plaintiffs' comment that the United States should have alleged harm to competition for the sale of beer in a nationwide market concerns matters that are outside the scope of this APPA proceeding because neither claimed harm relates to the harms alleged in the United States' Complaint. As explained by this Court, in a Tunney Act proceeding, the district court should not second-guess the prosecutorial decisions of the Department regarding the nature of the claims brought in the first instance; ''rather, the court is to compare the complaint filed by the United States with the proposed consent decree and determine whether the proposed decree clearly and effectively addresses the anticompetitive harms initially identified.'' *United States* v. *Thomson Corp.*, 949 F. Supp. 907, 913 (D.D.C. 1996); *accord Microsoft*, 56 F.3d at 1459 (in APPA proceeding, ''district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself''); *BNS*, 858 F.2d at 462–63 (''the APPA does not authorize a district court to base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint''). This Court has held that ''a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.' '' *SBC Commc'ns*, 489 F. Supp. 2d at 14 (quoting *Microsoft*, 56 F.3d at 1459).

Further, the Missouri Plaintiffs' suggestion that the 2004 Amendments to the Tunney Act require a more extensive review of the United States' exercise of its prosecutorial judgment, Missouri Plaintiffs Comment at 6–7, conflicts with this Court's holding in *SBC Communications*. In *SBC Communications*, this Court held that ''a close reading of the law demonstrates that the 2004 amendments effected minimal changes, and that this Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11. This Court continued that because ''review [under the 2004 amendments] is focused on the 'judgment,' it again appears that the Court cannot go beyond the scope of the complaint.'' *Id.*

In short, the Tunney Act, as amended in 2004, requires the Court to evaluate the effect of the ''judgment upon competition'' as alleged in the

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[4] *See United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

[5] The Missouri Plaintiffs filed their complaint on September 10, 2008, alleging that the merger would eliminate InBev as a potential competitor to Anheuser-Busch and thereby lessen competition in a relevant market consisting of the entire United States. Nearly two months later, Missouri Plaintiffs filed a motion for a preliminary injunction. *See Ginsberg* v. *InBev SA/NV*, No. 4:08CV01375, 2008 WL 4965859, at *1 (E.D. Mo. Nov. 18, 2008). The Missouri District Court denied the motion, holding that Missouri Plaintiffs' ''characterization [of InBev] as a perceived potential or actual potential competitor in the U.S. beer market [is] purely speculative and the evidence presented is insufficient to warrant granting [Missouri] Plaintiffs' Motion for Preliminary Injunction or holding a hearing regarding their Motion.'' *Id.* at *4. The court held further that ''the evidence presented demonstrates that it is overwhelmingly likely that Plaintiffs cannot succeed on the merits of their case * * *.'' *Id.*

In addition to filing a complaint in the Eastern District of Missouri, Missouri Plaintiffs sought to intervene in these Tunney Act proceedings ''for the purpose of challenging the merger.'' Missouri United States District Court Plaintiffs' Motion to Intervene, filed Jan. 14, 2009, 1. The Court denied their motion to intervene. Order, dated Feb. 3, 2009.

Complaint, in this case, competition in the market for beer in the Buffalo, Rochester, and Syracuse, New York, areas. *See* 15 U.S.C. 16(e)(1)(b). Because the United States did not allege that InBev's acquisition of Anheuser-Busch would cause harm in additional markets, it is not appropriate for the Court to seek to determine whether the acquisition will cause anticompetitive harms in other regions of the country.[6]

b. Determinative Documents

In its CIS, the United States certified that there were no determinative documents within the meaning of the Tunney Act, 15 U.S.C. 16(b). CIS at 16. Missouri Plaintiffs appear to argue that this certification is wrong, suggesting that the United States failed to submit determinative documents including ''the Import Agreement entered into by the Defendants in November 2006,'' Missouri Plaintiffs Comment at 16–17, which, in their view, is an illegal agreement or somehow relates to the theory of harm they alleged in their case against Defendants that is pending before the United States District Court for the Eastern District of Missouri.

There is no support for Missouri Plaintiffs' argument. The Tunney Act's notice and comment provision requires the government to make available to the public copies of the proposed consent decree, and ''any other materials and documents which the United States considered determinative in formulating such proposal.'' 15 U.S.C. 16(b). In *Massachusetts School of Law of Andover* v. *United States*, 118 F.3d 776, 785 (D.C. Cir. 1997) (''*MSL*''), the court held that ''the Tunney Act does not require that the government give access to evidentiary documents gathered in the course of an investigation culminating in settlement.'' The United States had argued that the statute referred to documents ''that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement.'' *Id.* at 784 (quoting brief of the United States). The Court concluded that the statutory language ''seems to point toward the government's view * * * and confines section 16(b) at the most to documents that are either 'smoking guns' or the exculpatory opposite.'' *Id.; accord United States* v. *Microsoft*, 215 F. Supp. 2d 1, 11 (D.D.C. 2002) (holding that the Tunney Act ''makes clear that the calculus by which documents are to be deemed 'determinative' is left entirely to the United States'' and calls only for ''documents 'which the United States considered determinative,' not documents which the Court or other parties would consider determinative''). The court added that ''[t]he legislative history in fact supports the government's still narrower reading.'' *MSL*, 118 F.3d at 784.

As stated, the United States certified to the Court in the CIS that there were no determinative documents. CIS at 16. It did so because there was no document, including the InBev/Anheuser-Busch import agreement, that was a ''smoking gun or its exculpatory opposite,'' or of similar nature, and because no document individually had a significant effect on the United States' formulation of the proposed Final Judgment. Accordingly, the Court should reject Missouri Plaintiffs' unsupported suggestion that the United States failed to submit determinative documents.

B. Comments That the Proposed Final Judgment Be Modified To Contain Additional Requirements for Defendants and the Acquirer

1. Summary of Comments

New York Distributors, Ohio Distributors, and Tri-County Beverage state that the proposed Final Judgment should be modified to require that Labatt brand beer sold in the United States be brewed in Canada, to preserve its identity as a Canadian import. New York Distributors Comment at 5; Ohio Distributors Comment at 5; Tri-County Beverage Comment at 2. Ohio Distributors state that the proposed Final Judgment should be modified further to require the purchaser of the Divestiture Assets to maintain the current distributor network for a ''commercially reasonable time period'' and to give them the option to purchase Labatt brand beer from InBev beyond the three-year period provided for in the proposed Final Judgment. Ohio Distributors Comment at 2, 5. Finally, Ohio Distributors and Tri-County Beverage state that to be a viable competitor, the purchaser of the Divestiture Assets must remain priced at domestic beer levels, maintain brand (e.g., Labatt Blue Light) and packaging offerings (e.g., thirty packs), and continue to invest in marketing and promotion. Ohio Distributors Comment at 6; Tri-County Beverage Comment at 2 (concurring with Ohio Distributors' comments).

2. The United States' Response

a. The Proposed Final Judgment Is Sufficient To Eliminate the Alleged Anticompetitive Effects

The modifications proposed by Ohio Distributors, New York Distributors, and Tri-County Beverage are not necessary to ensure that competition will remain in the market alleged in the Complaint. The proposed Final Judgment imposes extensive requirements on Defendants that are sufficient to eliminate the alleged anticompetitive effects. First, the proposed Final Judgment requires Defendants to divest all of the assets of IUSA (except for a narrow class of assets unrelated to the brewing, promotion, marketing or distribution of Labatt brand beers) and all of the real and intellectual property rights required to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United States. Proposed Final Judgment II.F. These rights include an exclusive, perpetual, assignable, transferable, and fully paid-up license that grants the acquirer the rights to (a) brew Labatt brand beer in Canada and/or the United States, (b) promote, market, distribute, and sell Labatt brand beer for consumption in the United States, and (c) use all of the intellectual property rights associated with the marketing, sale, and distribution of Labatt brand beer for consumption in the United States, including the trade dress, the advertising, the licensed marks, and such molds and designs as are used in the manufacturing process of bottles for the Labatt brand beer. *Id.*

Second, to ensure that the Acquirer can brew Labatt beer without any loss of quality or consistency, the proposed Final Judgment requires Defendants to sell to the Acquirer all production know-how for Labatt brand beer, including recipes, packaging and marketing and distribution know-how and documentation. *Id.* The recipes required to be divested include all ''formulae, recipes, processes and specifications specified * * * for use in connection with the production and packaging of Labatt Brand Beer in the United States, including * * * yeast, brewing processes, equipment and material specifications, trade and manufacturing secrets, know-how and scientific and technical information. * * *'' *Id.* at II.M.

Third, the proposed Final Judgment ensures the uninterrupted sale of Labatt brand beer in the United States by requiring Defendants to divest all rights pursuant to distributor contracts and, at

[6] Missouri Plaintiffs also assert that ''the result of the [proposed Final Judgment] would be to eliminate InBev, and its LaBatt brands, from competing head to head with Anheuser Busch Budweiser brands,'' Missouri Plaintiffs Comment at 4, but make no attempt to explain why the proposed divestiture, which requires the divestiture of all of InBev's assets related to the sale of Labatt brand beers in the United States, would not preserve head-to-head competition between Labatt brands and Budweiser brands.

the option of the Acquirer, to negotiate a transition services agreement of up to one year in length, and to enter into a supply contract for Labatt brand beer sufficient to meet all or part of the Acquirer's needs for a period of up to three years. *Id.* at II.F, IV.H, IV.J.

Fourth, to ensure that the Acquirer can continue to develop, grow, and improve the Labatt brand over time, the proposed Final Judgment requires Defendants to grant to the Acquirer a perpetual license that will allow the Acquirer to brew, distribute, market, and sell ''extensions'' of Labatt brand beer (e.g., a ''Light'' or ''Ice'' version). *Id.* at II.J.

Fifth, Defendants are required to satisfy the United States in its sole discretion that the proposed Acquirer of the Divestiture Assets will operate them as a viable, ongoing business that will compete effectively in the relevant markets, and that the divestiture will successfully remedy the otherwise anticipated anticompetitive effects of the proposed merger. *Id.* at IV.I. In approving the Acquirer, the United States may appropriately consider the issues raised by the distributors' comments.

b. The Proposed Modifications Could Reduce Competition

Not only are the additions to the proposed Final Judgment recommended by the New York Distributors, Ohio Distributors, and Tri-County Beverage not needed to supplement the already extensive requirements and safeguards in the proposed Final Judgment, as the United States now explains, they could in fact reduce the ability of the Acquirer of the Divestiture Assets to compete.

i. Requirement To Brew Labatt in Canada

The distributor groups argue that the proposed Final Judgment should be modified to require the purchaser of the divested assets to maintain Labatt as a Canadian import. They allege that ''[t]he Labatt Brand derives much of its cachet from its status as a Canadian import,'' Ohio Distributors Comment at 2, and that brewing Labatt in the United States ''would make it impossible to maintain the Labatt Brand as a competitive brand,'' New York Distributors Comment at 4.

The proposed Final Judgment allows the Acquirer of the Divestiture Assets to brew Labatt brand beer in Canada, but also gives the Acquirer the flexibility to brew the beer in the United States, Proposed Final Judgment II.F(i)(A), so as not to limit the Acquirer's ability to adopt the most cost-effective strategies. Brewing Labatt brand beer in the United States may enable the Acquirer to offer lower prices. Beer can be segmented by price into four categories: sub-premium (e.g., Busch); premium (e.g., Budweiser); super-premium (e.g., Michelob); crafts/import (e.g., Sam Adams, Heineken). Imports generally are priced significantly higher than premium. Labatt brands, however, are priced at premium levels. The distributor commenters recognize that premium pricing is an important part of Labatt's success. *See, e.g.*, Ohio Distributors Comment at 6. Modifying the Final Judgment to require the Acquirer of the Divestiture Assets to brew Labatt brand beer in Canada, could impair the Acquirer's ability to maintain premium-level prices over time. In contrast, the proposed Final Judgment gives the Acquirer the option to choose a brewing location that will maximize its ability to compete with other premium beers.

ii. Requirement To Maintain Existing Distributor Network

The Ohio Distributors argue that the Final Judgment should ''require the Acquirer [of the Divestiture Assets] to keep the Labatt Distributors for a commercially reasonable period of time.'' Ohio Distributor Comment at 8. Without such a requirement, they claim, the divestiture could precipitate consolidation among beer distributors, resulting in higher prices to consumers. *Id.* at 2.

Such a requirement is not necessary to preserve the current level of competition and could inhibit the Acquirer's ability to compete. The requirement in the proposed Final Judgment that InBev sell to the Acquirer all of its existing U.S. wholesaler and distributor agreements for Labatt brand beer (along with the supply agreement), Proposed Final Judgment II.F(iii)(B), IV.J, will prevent interruptions in the distribution of Labatt beer in the United States. If these wholesaler and distributor agreements are the most efficient mechanism to distribute Labatt brand beer, then the Acquirer of the Divestiture Assets will have a strong incentive to keep them. If they are not, or if market conditions change, then the proposal of the commentators may reduce the ability of the Acquirer to sell Labatt brand beer at competitive prices. Moreover, limiting the Acquirer's ability to change distributors could prevent the deconcentration of the distributor market if, for example, the Acquirer desires to switch from a joint Labatt/Anheuser-Busch distributor to a distributor with no other major brands.

iii. Other Competitive Practices

The Ohio Distributors identify additional business practices that they believe contribute to the competitiveness of the Labatt brand, but do not appear to specifically recommend that the proposed Final Judgment include requirements that the Acquirer adhere to these practices. Rather, they state that the Division should consider the Acquirer's product mix and sales and marketing plans to determine that the Acquirer will maintain competitive pricing, an attractive brand and packaging mix, and sufficient spending on promotion. Ohio Distributors Comment at 6. The requirements of the proposed Final Judgment adequately ensure that the Acquirer of the Divestiture Assets will have the ability and means to aggressively market and sell Labatt brand beer and to continue to develop and grow the brand. As described above, the proposed Final Judgment allows the Acquirer the flexibility to brew Labatt brand beer in the most cost-effective location, giving it the ability to maintain competitive levels of marketing and prices. In addition, the Divestiture Assets contains the Labatt brand portfolio, which includes ''extensions of any one or more of [the Labatt brands] * * * as may be developed from time to time by the Acquirer.'' Proposed Final Judgment II.J. The proposed Final Judgment also requires that Defendants demonstrate ''to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint.'' Proposed Final Judgment IV.I. Finally, before approving the divestiture, the United States may properly consider the Acquirer's plans for packaging, marketing, and promotion.

IV. Conclusion

The issues raised in the four public comments were among the many considered during the United States' extensive and thorough investigation. The United States has determined that the proposed Final Judgment as drafted provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published in the **Federal Register**.

Dated: February 25, 2009.

Respectfully Submitted,

Mitchell H. Glende,

Trial Attorney, Litigation I Section—Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 353–3106, (202) 307–5802 (facsimile).

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. *InBev N.V./S.A., InBev USA LLC, and Anheuser-Busch Companies, Inc.*, Defendants.

CASE NO: 1:08–cv–01965 (JR)
JUDGE: Robertson, James

Notice Regarding Video Exhibit Attachment

New York Distributors Comment Exhibit O (''Exhibit O''), which is an attachment to the United States' Response to Public Comments on the Proposed Final Judgment, is a compact disc consisting of nine (9) movies in MPEG format. Exhibit O is being maintained in the case file in the Clerk's Office. The exhibit will be available for public viewing and copying between the hours of 9 a.m. to 4 p.m., Monday through Friday.

Dated: February 25, 2009.

Mitchell H. Glende,
Trial Attorney, Litigation I Section—Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 353–3106, (202) 307–5802 (facsimile).

January 23, 2009

Via FedEx Express:

Joshua H. Soven, Chief, Litigation I Section, Antitrust Division,

Department of Justice, 1404 H Street, NW., Suite 4000, Washington, DC 20530, Re: Public Comment on *United States of America* v. *InBev NV/SA, et al.*, Case No. 08–cv–1965–JR.

Dear Mr. Soven: Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h)(''APPA'' or ''Tunney Act''), this Public Comment is respectfully submitted by the following individuals, all citizens of the State of Missouri: Marty Ginsburg, Patricia Odenbach, Daniel Sayle, Joseph Lott, Terri Lott, Ariel Young, Ronald Martin, Sharon Martin, William Stage and Barry Ginsburg.[1] These individuals (''Missouri Plaintiffs'') request that the Court not enter the Proposed Final Judgment, as it is not within the public interest. 15 U.S.C. 16(e)(1).[2]

I. Summary of Public Comment

Notably, this is the largest cash acquisition in the history of the antitrust laws. If InBev is allowed to purchase the United States' largest brewer, Anheuser-Busch, there no longer would be any significant major potential competitor to influence pricing and marketing practices in the United States anywhere near the degree to which InBev, as the largest brewer in the world, is able to do; the beer market in the United States would be controlled by absentee foreign owners; consumer welfare and choice and the benefits of competition would be substantially lessened and tend toward the creation of a monopoly; and prices would be artificially enhanced and raised and extracted without regard to supply, demand and competition on the merits.

These Missouri Plaintiffs also respectfully submit that under the ''actual potential competition'' doctrine and the ''perceived potential competition'' doctrine, this Court as part of its review under the Tunney Act, must conduct an analysis of the Defendant InBev's objective ability to enter the target market, either *de novo,* or through a ''toe-hold'' acquisition. After doing so, the Court should reject the Proposed Final Judgment.

The ''actual potential competition'' doctrine seeks to determine whether the defendant is a potential market entrant and, if so, whether its eventual entry would be likely to de-concentrate the market or lead to other pro-competitive affects, such as increased competition, lower prices, better service or higher quality standards.

The ''perceived potential competition'' doctrine looks at whether the defendant's presence on the periphery of the market, or ''in the wings'' exerts a present pro-competitive impact on the market participants. The reasoning underlying this doctrine is the current market participants will compete hard against one another, seeking to prevent the would-be competitor from entering. In both cases, the doctrines lead to increased competition which inures to consumers' benefit.

In this regard, the position of InBev, the largest beer manufacturer in the world, is mentioned in the Government's Complaint, but there is no mention, much less analysis of the fact that InBev has waited in the wings of the U.S. beer market. The focus of the DOJ's Complaint is on but one region, in New York State where InBev's Labatt brand is in heated competition with Anheuser-Busch and MillerCoors. Missouri Plaintiffs contend that InBev is well-situated as an ''actual potential competitor,'' because the market economics are attractive and InBev is well-suited to take advantage of them. Its entry, Missouri Plaintiffs contend, would likely eventually de-concentrate the market to consumers' benefit. Missouri Plaintiffs also contend that InBev is a ''perceived potential competitor,'' whose presence on the periphery of the market currently exerts pro-competitive influence on the market.

Nor is there any analysis in the Government's filings about the Import Agreement between InBev and Anheuser-Busch signed in November 2006. While mentioned almost in passing, there has been no explanation about the Import Agreement's impact on the public interest and how it is an integral component of the Court's mandatory independent analysis of the Complaint, the requested relief, and the PFJ. Missouri Plaintiffs submit that this is at the genesis of why the Complaint is too narrow, the proposed remedies inadequate, and the PFJ is inimical to the public interest. As we explain below, under APPA's standards of review, the Court may properly consider the Import Agreement, and its impact, and its relationship to the suggested remedies in this case. Such evidence is in fact part and parcel of an appropriate inquiry into the purpose, meaning and efficacy of the PFJ.

As an overview, this Public Comment submits the following issues are germane to the Court's consideration of whether this Proposed Final Judgment falls outside of the public interest. First, as noted above, that the Court must deny entry of the PFJ under the ''actual potential competition'' doctrine and the ''perceived potential competition'' doctrine. Notably, in this void of any discussion of these doctrines, there are also no ''determinative documents'' which have been made available to the public as required under the Tunney Act, 15 U.S.C. 16(b).

In conjunction with this, there is a corresponding failure of the DOJ to address the legality and impact of the November 2006 Import Agreement between the Defendants, and whether or

[1] These individuals are consumers and purchasers of Anheuser-Busch's beers who in the four years prior to the filing of this action by the United States Department of Justice, have purchased beer produced by one or both of the defendants, and each individual expects to continue to purchase beer produced by one or both of the defendants in the future.

These individuals have also filed a private antitrust action in United States District Court for the Eastern District for Missouri, contending that the acquisition by InBev NV/SA (''InBev'') of Anheuser-Busch Companies, Inc. (''Anheuser-Busch'') violates Section 7 of the Clayton Act, and that they are threatened with loss and damage in the form of higher prices, fewer services, fewer competitive choices, deterioration of products and product diversity, suppression and destruction of smaller actual competitors through exclusive distribution, full-line forcing, and the like, and other anticompetitive effects and consequences that may, and most probably will, result from the elimination of the actual and potential competition of InBev as a result of the acquisition.

[2] Additionally, on January 14, 2009, the Missouri Plaintiffs filed a Motion for Intervention in this case, requesting this Court to allow intervention by the Missouri Plaintiffs for the purpose of challenging the acquisition as being against the public interest and illegal.

not the terms and effects of the Import Agreement have an anticompetitive impact upon the relevant market or markets. Third, even in the three separate geographic areas which are the subject of the proposed remedy, the result of the PFJ would be to eliminate InBev, and its LaBatt brands, from competing head to head with Anheuser Busch Budweiser brands, thereby reducing the number of strong market competitors while at the same time eliminating InBev—the wealthiest and most viable potential entrant into those markets.[3]

The record in this action also has shed a light on the Government and the Defendants' procedural gamesmanship with regard to representations and omissions to the District Courts in connection with the two-track litigation in Missouri District Court and this Court, in order to lead these Courts into prematurely approving the acquisition. In this context, the Court must consider the bi-partisan comments of high-ranking elected officials of the State of Missouri condemning the transaction as anticompetitive and otherwise against the public interest. The Court should also exercise its independent evaluation of this controversial acquisition in the context of the public comments of Congress encouraging independent determination by the reviewing court and the 2008 concerns of the Chairman of the House Judiciary Committee Task Force on Competition Policy and Antitrust Laws questioning the ''hands off approach'' of the Antitrust Division concerning mergers.

II. Procedural History

1. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), a Proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement were all filed with this Court on November 14, 2008.

2. Also on November 14, 2008, the United States Department of Justice, Antitrust Division, filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Anheuser-Busch Companies (''Anheuser-Busch'') by InBev N.V./S.A. (''InBev''). See Competitive Impact Statement, Docket No. 2 at 1.

3. The Complaint alleges, *inter alia,* that certain aspects of the proposed acquisition by Inbev NV/SA of Anheuser-Busch Companies, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18, in that ''the likely effect of the merger would be to lessen competition substantially in the market for beer in the metropolitan areas of Buffalo, Rochester and Syracuse, New York.'' See DOJ Complaint, ¶¶ 1–7. The DOJ also filed a Proposed Final Judgment (''PFJ''), Hold Separate Stipulation and Order, Plaintiff United States' Explanation of Consent Decree Procedures, and Competitive Impact Statement in this Court. (See Docket Nos. 1, 2.)

4. On the evening of November 14, 2008, this Court signed the DOJ's Hold Separate Stipulation and Order. (Docket No. 9.) This Court has not signed the Proposed Final Judgment.

5. Pursuant to 15 U.S.C. 16(b), the revised Proposed Final Judgment and Competitive Impact Statement were published in the **Federal Register** on November 25, 2008, at 73 FR 71682 (Nov. 25, 2008).

6. The 60-day comment period specified in 15 U.S.C. 16(b) commenced on November 25, 2008, 73 FR 71682 (Nov. 25, 2008), and ends no earlier than January 24, 2009.

III. Summary of Standard of Review

The Antitrust Procedures and Penalties Act of 1974, also known as the Tunney Act, directs this Court to determine whether entry of the Proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1); *United States* v. *SBC Communications,* 489 F.Supp.2d 1, 10 (D. D.C. 2007). In amending the Tunney Act in 2004, Congress was clear that a court should be careful to independently weigh the statutory factors. See 150 Cong.Rec. S3616–14, S3619 (Apr.2, 2004)(Statements of Senators Hatch and Devine), 150 Cong.Rec. H3659–60 (June 2, 2004)(Statements of Representatives Scott and Conyers).

In making that determination, in accordance with 2004 Amendments, pursuant to 15 U.S.C. 16(e)(1)(A), the Court must consider a number of factors including:

> The competitive impact of such judgment * * * anticipated effects of alternative remedies actually considered * * * and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest.''

Under section (B), this Court must also consider:

> ''The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally * * * and * * * consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

This grants the court wide discretion to assure that the judgment is in the public interest. The Court is not required, as the DOJ has claimed in its Competitive Impact Statement, to ''accord deference to the government's predictions about the efficacy of its remedies * * *'' Competitive Impact Statement, Docket No. 2 at 14. To the contrary, the Tunney Act is designed to constrain the Department of Justice from entering into settlements that provide DOJ with an exit from an antitrust case but do not provide the public with a remedy commensurate with the defendant's antitrust violations. Indeed, the Court is empowered to ''take testimony of government officials[4] or expert witnesses, appoint a special master or expert consultant, authorize participation by other parties as *amici* or intervenors, or 'take such other action in the public interest as the court may deem appropriate.' '' *United States* v. *SBC Communications, supra*, 489 F.Supp.2d 1, 10–11.

As we explain below, while the Complaint seeks to enjoin the entire acquisition, the Proposed Final Judgment and Competitive Impact Statement focuses only on three metropolitan areas in New York State (the Buffalo, Rochester, and Syracuse areas) and does not provide any relief for any other antitrust violations which arise from the acquisition.

At bottom, it appears that while the Court must not engage in an unrestricted evaluation of what relief is appropriate, nor can it act as a ''judicial rubber stamp of proposed consent decrees.'' As explained by Senator Kohl at the time of the amendments to the Tunney Act, there are ''concerns with the political influence of large companies in these matters.'' And, as stated in *United States* v. *SBC Communications*, the 2004 amendments were intended to ''assure that courts undertake meaningful review of antitrust consent decrees to assure that they are in the public interest and analytically sound.'' 489 F.Supp.2d at 10.

It is also noteworthy that while a Court may not require that remedies ''perfectly match the alleged violations'' a Court is also not obligated to accept on its face everything that is or is not in the Complaint. Nor must the Court bless a proposed settlement that as some cases have noted, makes a ''mockery of

[3] Here there has been no showing at all that any ''independent, viable acquirer'' can step into the shoes of InBev, who the Government claims had market shares of 21 percent in Buffalo and Rochester and 13 percent in Syracuse market. See Competitive Impact Statement at 6, noting that ''Entry of a new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly important brand acceptance necessary to succeed.''

[4] The Tunney Act authorizes the district judge to ''take testimony of Government officials as the court may deem appropriate * * *'' *U.S.* v. *Microsoft*, 56 F.3d 1448, 1459 (D.C. Cir. 2001), *citing* 15 U.S.C. § 16(f)(1). Under certain conditions, a Court can consider whether the DOJ's approach is in fact suggestive of either ''bad faith or malfeasance.'' *United States* v. *Microsoft* supra, 56 F.3d at 1458; 15 U.S.C. 16(e)(2) (1988).

judicial power.'' Here, the DOJ antitrust Complaint seeks to enjoin the entire InBev/Anheuser-Busch acquisition, but the proposed settlement addresses the sale and distribution of beer in only three discreet metropolitan regions in New York State—Rochester, Buffalo and Syracuse. There is no remedy for the rest of the entire country, no consideration of the elimination of InBev as a potential entrant into the relevant market or markets, and under applicable standards for the Tunney Act, this Court may properly consider if the Government's Complaint is too narrowly drawn.

Further, the Court must also consider if the Government's action is so limited and the remedy so unsatisfactory as to amount to a virtual sham, thereby making it both against the public interest as well as a mockery of judicial power. Further, were obvious anticompetitive injury to occur under this settlement in relevant markets or upon the public generally, or the enforcement mechanism appears to be inadequate or otherwise ineffective, then the Court may reject the Proposed Final Judgment.

IV. The Pending Missouri Action

On September 10, 2008, these Missouri Plaintiffs filed a private antitrust suit in the District Court for the Eastern District of Missouri, brought under Section 16 of the Clayton Antitrust Act (15 U.S.C. 26) alleging a violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. 18. See Missouri Plaintiffs' Motion for Intervention filed January 14, 2009, Docket No. 13, (hereinafter the ''Motion for Intervention''), Schwartz Decl., Docket No. 13–3, Exh. 1, Complaint, *Ginsburg, et al.*, v. *InBev NV/SA, and Anheuser-Busch Companies, Inc.,* Case No.: 08–cv–01375–JCH. The Missouri Plaintiffs' Complaint was filed two months before the Department of Justice filed its action in the present case. To our knowledge, neither the DOJ nor the Defendants in this action advised this Court of the pendency of that Missouri action, the alleged market definition, the pricing impact immediately following the announcement of the decision and, more generally, the underlying legal and factual basis for the claims asserted.

In the Missouri Action, the Missouri Plaintiffs seek a permanent injunction to prohibit the acquisition of Anheuser-Busch, the largest brewer in the United States, by InBev, the largest brewer in the world, for $52 billion, the largest cash payment ever offered to purchase a competitor. Following a Rule 16 conference held on January 5, 2009, the Missouri District Court has set a trial date for February 1, 2010, also leaving open the possibility for an earlier trial. As noted above, on January 20, 2009 filed under seal, an Emergency Motion for Injunction Pending Appeal in the United States Court of Appeals for the Eighth Circuit.

V. Statement of Facts and Specific Comments on the Complaint, Relief Requested and Proposed Final Judgment

A. The U.S. Beer Market

Beer is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act. Docket No. 1, Complaint, ¶ 14. Beer is sold to consumers through a three-tier market system throughout the United States. Complaint, ¶ 15. In the United States, the largest and the most profitable beer selling market in the world and InBev's most targeted market, Anheuser-Busch, with 50% of the market, is the undisputed United States leader, with more than 2½ times as large as its closest United States competitor, SABMiller (formed from the combine of South Africa Brewing and Miller), which has 18% of the market; 4½ times as large as the third largest competitor in the United States, MolsonCoors (formed from the combine of Canadian Molson and Coors), which has 11% of the market; 3½ times as large as all imported beers, which have a total of 14.5% of the market; and 7 times as large as all domestic craft or microbrewery beers, which have a total of 7% of the market.

Recently, the number two and number three competitors in the United States, SABMiller and MolsonCoors, combined their American businesses, and now account for 30% of the market. Consequently, with Anheuser-Busch's 50% of the United States market, more than 80% (some analysts say 90%) of the production and sale of beer in the United States is controlled by only two companies. The United States market is substantially more than simply ''highly concentrated,'' as measured by the objective standards of the universally accepted Herfindahl-Hersch Index (''HHI''). (HHI measures and grades market concentration by adding the squared market share percentages of each of the competitors in the market.) The threshold for ''highly concentrated'' is under Department of Justice Guidelines, a value of 1800. An additional 100 points causes great concern among antitrust enforcers. Here, the market substantially exceeds that number, especially since the recent marketing combination of SABMiller and MolsonCoors in the United States. In 2007, the U.S. Beer Market carried an HHI of 3251, indicating its extraordinary concentration.

1. Anheuser-Busch

Anheuser-Busch has the country's largest network of independent distributors/wholesalers, numbering approximately 600. Almost all of the distributors are independent, and operate under exclusive agreements with Anheuser-Busch in which they agree not to deal with any products of any competitor of Anheuser-Busch and not to distribute any products outside of their own designated territories. Anheuser-Busch sells nearly 70 percent of the company's volume through wholesalers. Anheuser-Busch also owns 13 company-owned distributors/wholesale operations. Anheuser-Busch sold 104.4 million barrels of beer to United States wholesalers in 2007. The most influential factor in the sale of beer in the United States is advertising. Anheuser-Busch is a substantial advertiser, spending approximately $378 million last year alone, more than the combined spending of its main actual competitors in the United States.

2. The Creation of InBev and Its Position Relative to the Market

InBev sells the number one (#1) or number two (#2) beers in over 20 key beer markets throughout the world. InBev is the number one (#1) seller in the following countries: Canada, Brazil, Bolivia, Paraguay, Uruguay, Argentina, Belgium, Luxembourg, Croatia, Serbia, Montenegro, and the Ukraine; and the Number Two seller in Cuba, the Dominican Republic, Guatemala, Ecuador, Peru, Chile, Netherlands, Germany, Bulgaria, the Czech Republic, Russia and South Korea.

By way of background, prior to forming InBev in the merger of Belgium's Interbrew and Brazil's AmBev in 2004, the world's largest brewers were: (#1) Anheuser-Busch; (#2) SABMiller; (#3) Interbrew; (#4) Heineken, and (#5) AmBev. After the combination of Interbrew and AmBev, InBev became the largest brewer in the world.

As the world's largest brewer, InBev has enormous economic capabilities. Its 2007 market capitalization was in excess of $50 Billion, with net profits of $7.8 Billion from revenues exceeding $21 Billion. These capabilities have also been demonstrated by its ability to raise, and then pay, the $52 Billion in cash to acquire Anheuser-Busch.

Prior to this attempt to acquire Anheuser-Busch, InBev stated unequivocally that it intended to become a ''player'' in the production

and sale of beer in the United States. Only eight months after the merger of AmBev and Interbrew, forming InBev, Mr. Brito stated his intention to shortly ''complete our dream of becoming a pan-America player.''

InBev also announced to competitors and to the public alike that it intended to be an entrant into the United States market for the production and sale of beer. InBev even stated in press releases as recent as 2007 that its ''strategy is to strengthen its local platforms by building significant positions in the world's major beer markets.'' InBev's strategy began with the Interbrew-AmBev merger and in November 2006 InBev executed a distribution contract with Anheuser-Busch for the distribution of InBev premium brands Stella Artois, Beck's and Bass in the United States. It is this November 2006 Import Agreement which is described in the DOJ's Complaint in this case.

InBev has operations around the world and internally divides its operations into six regions: North America, Western Europe, Central and Eastern Europe, Asia Pacific, Latin America North and Latin America South. One if its regions is North America, where it sells Labatt Blue, the number one Canadian brand in the world.

The North American region includes both Canada and the United States. InBev has eight breweries in Canada. As explained below, immediately prior to the acquisition, InBev was not operating any breweries in the United States. InBev traded in the United States through its exclusive distribution agreement with Anheuser-Busch. InBev has also owned Labatt USA, and the Labatt brand is described in detail in the Complaint filed in this case.

3. The Reaction to the Creation of InBev

Once InBev was created in 2004, competition in the United States increased dramatically. The industry fell into a protracted price war in 2004 that lasted between a year and 18 months. During this same period, Anheuser-Busch further cut its prices by offering greater promotional discounts. Its share of volume sold through promotional discount increased from 57% in the first quarter of 2004 to 64% by the first quarter of 2006. Compared to other years, it spent millions more discounting its products the year after InBev's creation: [5]

ANHEUSER-BUSCH PROMOTIONAL DISCOUNTING ($ MILLIONS)

2002	2003	2004	2005	2006	2007
543.5	511.8	535.7	716.7	675.3	688.6
% Change	−6%	4%	25%	−6%	2%

Anheuser-Busch also markedly increased its advertising expenditures the year after InBev was created. While advertising expenditures were flat from 2002 through 2004, they increased by $45 Million in 2005, falling again after InBev and Anheuser-Busch executed the 2006 ''Import Agreement.''

ANHEUSER-BUSCH ADVERTISING EXPENDITURES ($ MILLIONS)

2002	2003	2004		2005	2006	2007
Anheuser	821.7	806.7	806.7	849.5	771.2	782.7
% Change	−2%	0%		5%	−10%	1%

Further evidence of InBev's competitive threat, Anheuser-Busch and Miller responded by investing to protect their market shares: ''InBev is coming into a market that is like a hornet's nest that has been disturbed * * * Anheuser and Miller aren't willing to lose a single case, and they're spending money to ensure that nobody else gains share.''

In addition, there is already substantial evidence in the record from the Government that InBev's presence in the market actually increases competition. InBev's Labatt beer competes vigorously against both Anheuser-Busch and MillerCoors in the northeast United States. In those markets, and as the Complaint in this case generally agrees through its analysis of the three areas (Rochester, Buffalo and Syracuse), Labatt enjoys a 21% share of the market, while Anheuser-Busch and MillerCoors (the MolsonCoors/SABMiller joint venture) have 24% and 26%, respectively. As a result of this competition, prices have been kept at competitive levels.

In 2006, InBev began discussions with Anheuser-Busch that contemplated InBev's agreed withdrawal from competing in the United States market. In May 2006 InBev sold its only U.S. brewery, Rolling Rock, to Anheuser-Busch. Eventually, the firms began discussing what would become the ''Import Agreement,'' a twenty-year agreement which authorized Anheuser-Busch as the exclusive importer of InBev's brands: Stella Artois, Beck's, Bass Ale, Boddington's, and others. The agreement was signed in November 2006 and was the subject of press releases announcing it.

After InBev's sale of Rolling Rock and the consummation of the Import Agreement, Anheuser-Busch stopped competing as vigorously as it had the previous year, cutting both its advertising expenditures and promotional discounts in 2006.

B. Specific Comments on the Proposed Final Judgment

1. Despite the Huge Size of the Acquisition, There Are No Determinative Documents

Missouri Plaintiffs have reviewed the Court's docket and the **Federal Register** and believe that there are not ''any other materials and documents which the United States considered determinative in formulating [a consent decree] * * *'' 15 U.S.C. 16(b); *United States* v. *Alex Brown & Sons, Inc.* 169 F.R.D. 532, 541 (S.D.N.Y. 1996), citing *United States* v. *General Contracting Co.* 531 F.Supp. 133, 537 F.Supp. 571 (E.D. Va. 1982) (affirming that Government must make available to the public all

[5] These figures derive from Anheuser-Busch's annual reports, which are filed with Securities Exchange Commission, and therefore subject to judicial notice.

''determinative documents'' in formulating a proposed consent decree).

In the absence of any such documents being made available, Missouri Plaintiffs respectfully submit that the Court first inquire as to why there are no such documents in an acquisition of this size.

2. The DOJ Has Provided No Information or Analysis About the Highly Publicized and Material November 2006 Import Agreement Between the Defendants

One of the determinative documents that has not been put in the record is the Import Agreement [6] entered into by the Defendants in November 2006.

The DOJ Complaint states that under this agreement, Anheuser-Busch became the exclusive distributor of InBev products in the United States. Missouri Plaintiffs contend that before approving the PFJ, this Court must determine if the Import Agreement is in and of itself, anti-competitive as a matter of law. Indeed, the Complaint in this case clearly seeks to enjoin the acquisition as a whole. This Import Agreement provides for Anheuser Busch to be the exclusive distributor of InBev products in the United States. As a whole, the remedy proposed by the DOJ cannot be independently evaluated absent consideration of the terms of that agreement, nor can the Court determine whether the settlement of the United States' lawsuit on the proposed terms is in the public interest. (The Import Agreement is described at 73 FR 71683, Complaint at ¶ 9. There, the United States' Complaint does not explain any aspect of the agreement other than to mention the exclusion of the distribution of certain InBev brands.) The absence of any discussion about the single most significant agreement between the InBev and Anheuser Busch is glaring and should raise a red flag to this reviewing Court; this Court also cannot properly evaluate the extent of the Defendants' head-to-head competition without this Import Agreement.

Here, the DOJ has stated that Anheuser-Busch accounts for approximately 50% of the beer sales nationwide and that beer is sold to consumers through a three-tier system in New York and the United States; but the United States has provided information to the Court only on the three areas in New York—where the United States claims the parties were in fact competing head-to-head. The public and the Court have not been provided with any explanation of the InBev's position as a perceived potential competitor, or an actual potential competitor, the effect of the Import Agreement on those doctrines, whether or not the industry viewed InBev as a competitive threat in the United States, and what impact occurred as a result of the November 2006 Import Agreement.

Missouri Plaintiffs also submit that due to the Import Agreement, as even the United States impliedly concedes, this Court must consider whether or not this Import Agreement served to prevent entry into the marketplace of the world's largest brewer, and what InBev received in return for entering into that Import Agreement.

These inquiries are clearly germane to whether or not the PFJ is in the public interest. 15 U.S.C. 16(e)(1)(A) & (B).

3. Potential Entry and the Potential Competition Doctrine

As noted above, InBev has been ready, willing and able to enter the United States market. Anheuser-Busch perceived and understood and believed that InBev was ready, willing and able to enter the United States market, and so represented to the United States District Court.

Section 7's ''potential competition'' theory has been split by the courts into two doctrines, both of which Missouri Plaintiffs allege are present here. The ''actual potential competition'' doctrine proscribes an acquisition of a large firm in an oligopolistic market if the acquiring firm would be expected to enter the market *de novo* or through a ''toe-hold'' acquisition, which would likely lead to eventual deconcentration of the target market. *United States* v. *Siemens Corp.*, 621 F.2d 499, 504 (2nd Cir. 1980) (''*Siemens*''). The ''actual potential competition'' doctrine, on the other hand, is concerned with the acquiring firm's ability to deconcentrate the market in the future. The ''perceived potential competition'' doctrine forbids an acquisition where the presence of the acquiring firm ''waiting in the wings'' of the market, and perceived by market participants as a potential entrant, exerts a pro-competitive influence on the market. *Id.* The ''perceived'' potential competition doctrine is concerned with the present effect that a noncompetitor has on the market. *Id.*

InBev's presence on the periphery of the market—as a perceived potential and actual entrant as well as a potential and actual dominant entrant—has been an important consideration in the pricing and marketing decisions of Anheuser-Busch and other American brewers or importers in the United States. InBev (party to the Import Agreement with Anheuser-Busch) is so situated as to be a potential competitor and likely to exercise substantial influence on the market behavior of those brewers in the market. Entry into the United States beer market by InBev through the acquisition of Anheuser-Busch—although its competitive conduct may be the mirror image of that of Anheuser-Busch—completely eliminates the potential major competitor exercising present influence on the market.

The facts also show that InBev is an aggressive, well-equipped and well-financed corporation engaged in the same line of commerce as Anheuser-Busch and intended to enter the oligopolistic market in the United States. As the world's largest brewer, InBev has enormous economic capabilities. Its 2007 market capitalization was in excess of $50 Billion, with net profits of $7.8 Billion from revenues exceeding $21 Billion. By reason of its economic capabilities, InBev has been more than able to enter the United States market *de novo* and build new breweries, create new jobs, and establish its own and new distributors to market its products, which already have a market presence in the United States by reason of its agreements with Anheuser-Busch to divide markets.

InBev possesses more resources than any other brewer in the world. It has the technical expertise to enter the market, producing over 200 brands of beer in 123 breweries worldwide. The ''imported beer'' segment of the U.S. beer market—the segment on which InBev has directed its focus—is highly attractive, growing at a rapidly expanding rate of 8% annually. Even InBev admits that it is easy to turn a profit in this market, since American consumers pay higher premiums for imported beers. The costs associated with InBev's entry are relatively very small: It does not need to construct breweries, develop a distribution network, or sink costs into launching new brands. In addition, there is a substantial likelihood that InBev's entry into the U.S. beer market would lead to future deconcentration of that market or other procompetitive effects.

The need to address these potential competition issues is consistent with the DOJ's own 1984 Merger Guidelines which specifically addresses situations where: (1) The acquired firm's market is highly concentrated (HHI above 1800); (2) entry barriers in that market are high so that firms without specific entry advantages cannot be expected to enter;

[6] *http://www.inbev.com/go/media/global_press_releases/press_release.cfm?theID=27&theLang=EN.* See also 73 FR.71683 (noting that Labette brands are excluded from the Import Agreement).

and (3) the acquiring firm's entry advantage is possessed by fewer than three firms. See *Antitrust Law Developments (Fifth)* (2002), American Bar Association Section of Antitrust Law at 356, citing *United States* v. *Falstaff Brewing Corp.* 410 U.S. 526, 532–537 (1973). There is no explanation before the Court as to how, in this case, the DOJ's analysis confirms to the established policies in its own Merger Guidelines.

Indeed, in seeking approval of the PFJ, the DOJ expressly stated that it was the perceived lack of entry into the marketplace by a new competitor that justified a conclusion of a lack of anticompetitive effect. 73 FR 71690. If it turns out that that InBev is a potential entrant that is being eliminated thereby harming competition and the Import Agreement was also designed to keep out the well-financed competitor InBev from competing with Anheuser brands in the United States (as well as fix prices and the like) [7]—then the DOJ's and Defendants' rationale for the Complaint and PFJ completely collapses. Further, the DOJ and the Defendants would be judicially estopped from using an anticompetitive agreement to defend the purported competitive benefit of their merger.

Moreover, Missouri Plaintiffs contend that the DOJ's action fails to adequately protect the public interest because the Import Agreement (and other evidence) will show Anheuser-Busch knew that outside of New York areas, InBev fell within the potential doctrine and under its own internal guidelines was obligated to act, thus making the Complaint in this case a sham and a mockery of judicial power. InBev had, and continues to have, the ability to compete against Anheuser-Busch by importing and distributing beer in the United States. InBev's competition has, in fact, constrained prices in the beer market in areas outside of the New York state which are singled out in the Competitive Impact Statement; and the facts show that it would be economically feasible and profitable for the behemoth InBev to enter the market.

[7] InBev's press release stated in relevant part that Anheuser had become the exclusive U.S. importer and controlled pricing and distribution of InBev import brands in the United States:

Effective February 1, 2007, Anheuser-Busch will import these premium brands and be responsible for their sales, promotion and distribution in the United States. These InBev brands, which had sales volumes of about 1.9 million hectoliters (or about 1.5 million barrels) in 2005, will be available to Anheuser-Busch's U.S. wholesaler network where possible.

4. The Defendants' Failure To Advise the Two Courts of Proceedings in Each Action

Defendants in this case failed to inform the Missouri District Court of the true facts of the status of its communications with the DOJ, subsequently used this Court's signature (late on November 14, 2008) on the Hold Separate Stipulation and Order to attempt to pre-empt and moot the Injunction hearing in the Missouri Action, have informed the Missouri District Court that the deal is now closed, thereby making the Missouri Injunction Complaint now ''moot,'' and informed the Missouri District Court that the shareholders have been paid in an irreversible change to the pre-merger status quo.

The Defendants also failed to tell the Missouri District Court that the DOJ could still change its mind and withdrawal, failed to adequately explain to the Missouri District Court that the Tunney Act public comment period was still open until at least 60 days after publication in the **Federal Register** and that with public comments still potentially in the offing that the Department of Justice had not yet filed a response to any public comments. Most importantly, the Defendants failed to tell the Missouri District Court that this Honorable Court had not yet signed the Final Judgment.

In this action, the Government and the DOJ also failed to tell this Court, when seeking the Court's signature on the afternoon of November 14, 2008, of the pendency not just of the litigation initiated by the Missouri Plaintiffs, but also that there had been extensive briefing on a Motion for Preliminary Injunction which also sought to enjoin the acquisition. After obtaining the signature from this Court on the Hold Separate Stipulation and Order, the Defendants then proceeded to announce the closing of the acquisition.

5. The Recognized Breaches of the Department of Justice's Duty To Protect the Public Interest When It Comes to Mergers and the Actions of the DOJ and Defendants In Not Advising the Court of the Clayton Act Claims in the Missouri Action

In considering whether to approve the Proposed Final Judgment, one of the Court's role in protecting the public interest is to exercise independent discretion and is ''* * * [i]nsuring that the government has not breached its duty to the public in consenting to the decree.'' *United States* v. *Bechtel,* 648 F.2d 660,666 (9th Cir. 1991). Therefore, as part if its analysis of this acquisition, this Court should take into account the virtual ''blank check'' that the DOJ has afforded controversial mergers among even direct competitors.

Here, the acquisition involves that of a large firm in an oligopoly. Anheuser-Busch is the undisputed leader in the United States beer market with almost 50% market share. There are only two additional significant rivals, SABMiller and MolsonCoors, as noted above. No other competitor has more than 6% market share. Furthermore, the number 2 and 3 rivals have combined their United States operations, further consolidating the industry. Finally, the HHI of the market is an astounding 3000+, well above the Department of Justice's threshold value of 1800 which indicates a ''highly concentrated'' market.

As we noted above, in April 2008—just a few months before this merger was announced—the Chairman of the Judiciary Committee Task Force on Competition Policy and Antitrust Laws, Representative John Conyers (D. Mich.) made the following comment about the present Antitrust Division of the Department of Justice when it comes to controversial mergers:

> ''We have an Antitrust Division that approved mergers left and right frequently overturning judgments of the career staff of the Department of Justice. The Department has not attempted to block or modify any major merger over the past seven years, including some of the largest, controversial mergers among direct competitors. * * * The Department hands-off approach has even encouraged companies with questionable merger justifications to give it a try. And some analysts have stated that the government has nearly stepped out of the antitrust enforcement business leaving companies to mate with whom they wish.''

Introductory remarks, April 24, 2008, hearings on the ''Northwest/Delta Airlines merger.'' Given the circumstances of this acquisition, and the manner in which the Antitrust Division has proceeded, these remarks appear not just particularly apt, but very disconcerting. In filing this action on November 14, 2008, the Government was well aware that there was Clayton Act litigation pending in the Eastern District of Missouri, that the Missouri Plaintiffs had requested a Motion for Preliminary Injunction and that the Defendants had filed an opposition to the request for injunctive relief. Rather than advise this Court of such material facts, the DOJ stood silent while the Defendants sought this Court's signature on the Hold Separate Stipulation and Order.

Any meaningful review of this transaction requires that this Court

consider whether the DOJ conducted a sufficient inquiry into the total competitive relationship between the parties, the effect of the transaction on the public as a whole, including the limited relief requested in just three geographic areas, and any need for additional relief, why the DOJ focused simply on the one area excluded by the Import Agreement between the Defendants and if the relief directed in these metropolitan areas is in the public interest.

6. The Bi-Partisan Statements by Public Officials

The public interest in this case is substantial. This case, before the Court during extraordinary economic struggles, has an extreme and overriding importance to not just the citizens of St. Louis, Missouri, but all of America. The public has a legitimate public interest in free and functioning markets. This interest is particularly significant to the American public in light of the recent nationwide and global history of huge multinational corporations engaging in unscrupulous and economically dangerous conduct that harm many citizens of Missouri and the United States. This is the largest all cash acquisition in the history of the antitrust laws.

The extreme public interest in this case is perhaps most evident in the bi-partisan statements of its elected representatives, charged with the responsibility of advancing the interests of their constituents. Missouri Governor Matt Blunt opposed the combination of InBev and Anheuser-Busch and [was] ''deeply troubled'' by the proposed merger. In a letter to William Kovacic, Chairman of the Federal Trade Commission, Governor Blunt affirmed his concerns that the sale ''would have destabilizing impacts on our nation and [Missouri]'s long-term economic interests.'' (Motion for Intervention, Schwartz Decl., Docket No. 13–3, Exh. 4, Blunt letter, June 16, 2008.) Governor Blunt has also directed Missouri's Department of Economic Development to ''explore every option and any opportunity we may have at the state level to help keep Anheuser-Busch where it belongs—in St. Louis.''

Senator Kit Bond (R.-Mo.) stated his opposition to the merger and the ''yielding of control and threatening of operations that have been beneficial to consumers, workers, American communities, and shareholders alike.'' Senator Bond also sought scrutiny to protect the interest of Missourians and all Americans, stating that ''Anheuser-Busch is a major driver in the local, state, and national economy up and down the supply chain.'' In a letter to Attorney General Mukasey and FTC Chairman William Kovacic, Senator Bond wrote, ''The proposed foreign acquisition of Anheuser-Busch is troubling to me because it potentially raises antitrust issues under existing law by putting significant market share of the U.S. in the hands of few competitors.'' (Motion for Intervention, Schwartz Decl., Docket No. 13–3, Exh. 5, Bond letter, June 12, 2008.)

Missouri Senator McCaskill (D. Mo.) expressed similar views, stating in June 2008 that ''this is not a company that is in stress * * * [a]nd has provided good middle class jobs.'' (Motion for Intervention, Schwartz Decl., Docket No. 13–3, Exh. 6, McCaskill letter, June 2008.) Senator McCaskill later stated in a letter dated November 12, 2008:

> ''Moreover, it is a company that has built its brand on the tremendous pride from a dedicated workforce and firm commitment to the community. *It is also clear that dramatic changes to Anheuser-Busch's marketing, workforce, and culture, will be needed to make the deal work, and these will have a big negative impact on the community.*''

(italics added) (Motion for Intervention, Schwartz Decl., Docket No. 13–3, Exh. 7, McCaskill letter, November 2008.) The public interest in the issues at bar should not be ignored.

VII. Conclusion

For the foregoing reasons, the Court should not enter the Proposed Final Judgment and after discovery, conduct a trial on the issue of whether or not the transaction is in the public interest.

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/s/

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January 15, 2009

By Hand

Joshua H. Soven, Esq., Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, D.C. 20530

Re: Written Comments on Proposed Final Judgment/*United States of America* v. *InBev N.V./S.A., et al.,* U.S.D.C. for D.C., Case: 1:08–cv–01965

Dear Mr. Soven:

I and this firm represent Esber Beverage Company of Canton and Mansfield, Ohio, the RL Lipton Co. of Cleveland, Ohio, and the Tri County Distributing, Co. of Youngstown, Ohio (collectively ''Labatt Distributors''). The Tri It Beverage Company of Buffalo, New York and the Onondaga Beverage Corporation of Syracuse, New York share some of the concerns expressed in this letter. We understand that those distributors and Tri County Distributing, Inc. of Detroit, Michigan will file additional comments. We provide this letter on the Proposed Final Judgment in the above-referenced action which requires InBev to divest all assets associated with the Labatt Brand (''Labatt Brand'') consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(c).

These comments outline the views of our clients relating to the Complaint, the Competitive Impact Statement and the Proposed Final Judgment in the above-referenced action relating to the acquisition by InBev N.V./S.A. (''InBev'') of the Anheuser-Busch Companies, Inc. (''Anheuser-Busch''). Our clients are available to you and are prepared to supplement and expand upon the comments set forth herein.

PURPOSE

At the outset, let me be clear that the Labatt Distributors concur with the Division's goal in the Proposed Final Judgment of preserving the Labatt Brand as a viable brand and as a competitor of the products of Anheuser-Busch and other competitive products in the relevant markets. The primary purpose of these comments is to ensure that the goals of the Proposed Final Judgment are achieved at all market levels to maximize the positive competitive impact of the divestiture.

The comments bear on two principal areas of concern. The initial concern goes to the identity of the eventual Acquirer (as defined in the Proposed Final Judgment as the entity or entities to whom Defendants divest the Divested Assets) and the actual terms of the divestiture. The second concern relates to preserve and enhance the maintenance of Labatt's existing distribution network as a means to more competitive markets.

First, the Acquirer must be well-positioned to support and market the Labatt Brand so that the position of the Labatt Brand is maintained and enhanced. The Labatt Brand

is a niche product, with a specific set of characteristics that make the Brand appealing. The Labatt Brand derives much of its cachet from its status as a Canadian import, and is most popular in those U.S. states closest to the Canadian border. The Labatt Brand products also have a price point more akin to domestic premium beer brands, such as Budweiser, Miller and Coors than most imported beers. That market positioning, as a Canadian import for the price of a domestic, has been the lynchpin the Labatt Brand's success. Any significant change in this price point will adversely affect competition in the relevant geographic markets. It is no accident that the Division's investigation concluded that InBev's acquisition of Anheuser-Busch could lead to unlawful market concentration in Buffalo, Rochester and Syracuse, which are just down the road (or across a lake) from Canada.

Second, another condition essential to the Division's goal of maintaining the Labatt Brand as a competitive brand is for the Acquirer to maintain the existing distribution network for a commercially reasonable period of time, especially where the alternative network would concentrate the distribution of the Labatt Brand and the Anheuser-Busch products. Such a requirement is clearly consistent with the intent of the Proposed Final Judgment and relates solely to the distribution system for the Labatt Brand products. The language of the Proposed Final Judgment leaves open the possibility that competition at the distributor level will be suppressed because the Acquirer may terminate existing distributors and consolidate the Labatt Brand with other brands at the distributor level. The most likely result of brand consolidation is unwanted market concentration and likely price increases. Consequently, the Final Judgment should require any Acquirer to maintain the existing distribution network for the Labatt Brand for a commercially reasonable time period.

Background

As proposed, InBev's acquisition of Anheuser-Busch would eliminate substantial, direct competition between InBev and Anheuser-Busch in Buffalo, Rochester and Syracuse, New York, as well as in other regions where the Labatt Brand is a significant player. For the reasons set forth in the Competitive Impact Statement, the proposed Final Judgment requires InBev USA LLC (''IUSA'') to divest the Labatt Brand, along with a license to brew, market, promote and sell Labatt Brand products for consumption in the United States as a condition for InBev proceeding with its $52 billion acquisition of Anheuser-Busch. The essential reason for requiring the divestiture is that the transaction, absent divestiture, would likely lead to higher prices for beer in the Buffalo, Rochester and Syracuse, New York metropolitan areas and possibly in other areas where the Labatt Brand has significant market share because the Labatt Brand's and Anheuser-Busch's offerings collectively constitute a substantial percentage of those markets.

As alleged in the Complaint, the Buffalo, Rochester and Syracuse beer markets are highly concentrated. The top three brewers—Anheuser-Busch, Miller-Coors and IUSA, respectively possess approximately 24%, 26% and 21% of the Buffalo and Rochester beer markets. In the Syracuse geographic market, the same three brewers respectively possess approximately 28%, 28% and 13% of the beer market. According to the Complaint, the supply responses from competitors or potential competitors would not likely prevent the anticompetitive effects of the proposed acquisition. Competition from other competitors is insufficient to prevent a small but significant and non-transitory price increase implemented by the combined entities in those markets from being profitable. Entry of a significant new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly-important brand acceptance necessary to proceed.

The remedy set forth in the Proposed Final Judgment for this anticompetitive aspect of the InBev acquisition of Anheuser-Busch is to require InBev to divest the Labatt Brand and grant a perpetual license to the Acquirer to sell Labatt Brand products for consumption throughout the United States, as well as to assign additional rights and contracts necessary to maintain the viability of the Labatt Brand. These rights include an exclusive, perpetual, assignable, transferable, and fully-paid-up license that grants the Acquirer the rights to (a) brew Labatt Brand products in Canada and/or the United States, (b) promote, market, distribute and sell Labatt Brand products for consumption in the United States, and (c) use all the intellectual property rights associated with the marketing, sale, and distribution of Labatt Brand products for consumption in the United States.

The Proposed Final Judgment ensures the uninterrupted sale of Labatt Brand products in the United States by ''requiring defendants to divest *all rights pursuant to distributor contracts*, and at the option of the Acquirer, to negotiate a Transition Service Agreement of up to one year in length, and to enter into a supply contract for Labatt Brand products sufficient to meet all or part of the Acquirer's needs for a period of up to three years.'' Competitive Impact Statement at 8 [emphasis added].

Comments and Rationale

As the Proposed Final Judgment and Competitive Impact Statement make clear, the goal of the Labatt Brand divestiture will only be realized if the Acquirer of the Labatt Brand assets maintains the brand as a viable competitor for Anheuser-Busch products in the relevant markets. If the Labatt Brand does not remain a viable competitor, the beer markets could fall victim to the concentration and anticompetitive price increases the Division is seeking to avoid through the divestiture ordered by the Proposed Final Judgment. Similarly, while not the focus of the Complaint or the remedy provided in the Proposed Final Judgment, the Labatt Brand has a significant market share in Ohio, Michigan, Indiana and Wisconsin, and the weakening of the Labatt Brand overall, including in those states, would have a similarly negative impact on competition in those regional beer markets.

Divestiture Only Remedies Antitrust Violations If the Divested Business Remains Viable Thereafter

In considering remedies for antitrust violations, the Courts, the Division and the FTC have uniformly recognized that the viability of a divested business line as a competitor is crucial to the usefulness of divestiture as a cure for an antitrust violation. *See, e.g., Utah Public Service Comm'n* v. *El Paso Natural Gas Co.*, 395 U.S. 464, 470 (1969) (''The purpose of our mandate was to restore competition in the California market * * * [t]he object of the allocation of gas reserves must be to place New Company in the same relative competitive position vis-à-vis El Paso in the California market as that which Pacific Northwest enjoyed immediately prior to the illegal merger.''). Indeed, post-transaction viability is the *sine qua non* of a curative divestiture. *See, e.g., White Consol. Indus.* v. *Whirlpool Corp.*, 612 F.Supp. 1009, 1028 (N.D. Ohio 1985) *vacated after compliance* by 619 F.Supp. 1022 (holding that company acquiring divested assets must (1) have capacity to compete effectively and (2) be free to operate divested business absent control by seller). The Courts, the Division, and the FTC have fashioned hold separate orders, like the Stipulation in the above-referenced action, to maintain the viability of the business which is the subject of a divestiture as a competitor in the relevant markets.

To Maintain the Labatt Brand as a Viable Brand, the Eventual Acquirer Will Need to Adopt Specific Strategies

The Labatt Distributors are concerned that certain potential Acquirers of the Labatt Brand are not good fits, and could diminish the Labatt Brand as a competitor for Anheuser-Busch in the relevant markets. While the Order correctly leaves to the Acquirer to decide the brand promotion and strategy to pursue, the Labatt Distributors wish to alert the Division and the Court to certain characteristics of the Labatt Brand that any Acquirer should attend to if the goal is to maintain the Labatt Brand as a viable competitor in the relevant markets. InBev, of course, has no incentive to sell the divested assets to the strongest competitor. To the contrary, after the divestiture, its financial interest will be to increase the sales of Anheuser-Busch products at the expense of the Labatt Brand. In this regard, the Labatt Distributors' list their strategic concerns.

The Acquirer of the Divested Assets Must Maintain the Labatt Brand as a Canadian Import

Under the Proposed Final Judgment, the Acquirer can purchase the Labatt Brand brewed by InBev in Canada for three years. After that time, the Acquirer must find a new brewery. As set forth in the Proposed Final Judgment, the Acquirer could even elect to brew the Labatt Brand on its own, in the United States, from the outset. Such a decision would be antithetical to maintaining the Labatt Brand as a competitive brand.

Much of the Labatt Brand's panache comes from its status as an import. With the sales volume and other relevant factors specific to the Labatt Brand products, the Acquirer's

options are limited. The Labatt Distributors are not aware of breweries with substantial capacity in Canada other than the breweries of InBev and Molson/Coors. Neither InBev nor Molson/Coors will have an incentive to assist the Acquirer in maintaining the Labatt Brand. The other breweries of which the Labatt Distributors are aware are too small to replace the approximately 20 million cases of the Labatt Brand products sold in the United States each year. The Labatt Distributors request that the Proposed Final Judgment be modified to give the Acquirer the option to extend its right to purchase the Labatt Brand brewed by InBev (which, after all, will presumably still be brewing it for sale in Canada and elsewhere) in Canada beyond the three-year period, or otherwise ensure that the Acquirer maintains the Labatt Brand as a Canadian import.

The Acquirer Must Maintain Competitive Pricing

The Labatt Distributors are concerned that an Acquirer, potentially saddled with debt from the cost of the acquisition, will raise prices in an effort to generate additional cash. Beer sales are elastic and greatly impacted by pricing. Such a move would be devastating to the Labatt Brand. The Labatt Brand is successful as an import at its current competitive price point. At higher prices (such as those charged by other imported beers), the Labatt Brand will be less competitive and sales will go down as Labatt Brand's consumers often choose the Labatt Brand over domestic beers like Budweiser and Coors but would likely opt for a cheaper domestic beer over a more-expensive Labatt Brand product.

The Acquirer Must Maintain an Attractive Portfolio/Brand Mix

The Labatt Distributors are concerned that the Acquirer will reduce the numbers of skus in the portfolio, thus weakening the Labatt Brand equity. The Acquirer must continue to offer the standard items including six, twelve, eighteen, twenty-four and thirty pack bottles and cans as well as the Seasonal Packages such as the Heritage packs, Sport packs as well as various brand extensions such as Light, Ale, Porter, Kokanee, Ice, etc. Beer sales in the United States are dependent on consumer factors, including packaging and convenience. In this way, beer sales are similar to most food products. Beer, in particular, is an extreme example of this phenomenon because of widespread situational use and the wide demographic range of consumers. Reduction in brand extensions for packages would further diminish the competitive level of Labatt Brand, decreasing competition in the relevant market.

The Acquirer Must Provide Sufficient Marketing and Promotional Resources to Maintain and Develop the Labatt Brand

As the Division recognizes, only an Acquirer who intends to continue investing in the Labatt Brand will succeed in fulfilling the pro-competitive goals of the Proposed Final Judgment. The Labatt Distributors urge the Division to consider both the product mix of the Acquirer as well as its sales and marketing plans to ensure that the Acquirer has both the incentive to invest in the Labatt Brand and to provide sufficient resources for marketing the Labatt Brand going forward. Beer is not a commodity, but rather an ingested product that connotes a particular image and level of reward. Without proper advertising and image support, the Labatt Brand will suffer and decrease its competitive heft.

The Likely Acquirer of the Labatt Brand Could Promote Further Concentration at the Distributor Level

The Labatt Distributors believe that maintaining the present distributor network is crucial to maintaining the Labatt Brand as a viable competitor in the relevant markets. The Labatt Distributors wholeheartedly concur with the Division's assessment of impact on competition caused by the InBev acquisition of Anheuser Busch. In fashioning its remedy for the anticompetitive impact, the Proposed Final Judgment included among the Divested Assets, ''all contracts and agreements of IUSA * * * including, without limitation, wholesaler and distributor agreements into which InBev or IUSA have entered for the sale or distribution of the Labatt Brand within the United States * * *;'' Proposed Final Judgment, § II (F)(iii)(B).

The Division's clear intention is to preserve the existing distribution network for the Labatt Brand. As the Division has recognized, distributors play an important role in the market for beer. *See* Competitive Impact Statement (''CIS'') at 4–6. Keeping the present network of Labatt Distributors in place for a commercially reasonable time period—the existing Distributors collectively have invested substantial sums in building the brand strength of the Labatt Brand—is essential to maintaining the Labatt Brand as a viable competitor. Because of a quirk in the regulation of distributors in some states, however, the Proposed Final Judgment may have an unintended consequence of promoting further consolidation at the distributor level and weakening Labatt Brand's distribution network.

An immediate change in the distribution network will result in the loss of a significant number of jobs and the elimination of certain businesses. Certainly, the Division does not want its actions to directly result in the loss of jobs and the consequent increase in market concentration. In addition, the Labatt Distributors have a very real and monetary interest in the success of the Acquirer and the Labatt Brand. For example, the Labatt Distributors in Ohio have invested hundreds of thousands of dollars in the success of the Labatt Brand.

On the contrary, the requirement set forth in the Proposed Final Judgment that the Divested Assets included all rights pursuant to distributor contracts may not prevent the Acquirer from terminating the Labatt Distributors. This issue is especially pronounced for distributors in Ohio and is likely to impact Labatt Distributors in other states as well. Certain state laws which protect distributors permit termination upon the sale of assets. Because of these laws, and the restrictions placed on the power of suppliers/manufacturers to terminate distributors, brand acquirers often terminate distribution contracts as a matter of course after an acquisition. Under normal circumstances, where the sale is part of the ordinary operation of the marketplace, such reflexive terminations do not raise competitive concerns. Here, however, where the sale is a remedy for an antitrust violation, such a termination would have the effect of lessening competition between the Labatt Brand and the remaining Anheuser-Busch brands. The replacement of some or all of the present Labatt Brand distribution network with a new set of distributors, possibly tied to the Acquirer but without longstanding commitment to, and appreciation of, the Labatt Brand creates a risk of weakening Labatt Brand as a brand to the detriment of competition in the relevant markets. The simple solution is to require the Acquirer to keep the Labatt Distributors for a commercially reasonable period of time.

The Acquirer Needs To Maintain the Existing Distribution Network for the Labatt Brands To Enhance the Competitive Results of Divestiture

The likely Acquirers of the Labatt Brand are Diageo-Guinness, USA (''Guinness''), High Falls-Genesee of New York, Heineken USA or certain investment groups not presently active in the beer market in the relevant geographic area. Many of the most likely Acquirers each sell brands competitive to the Labatt Brand in the relevant markets. While not exhaustive, the following discussion highlights the concern that the Labatt Distributors have around post-divestiture consolidation. The Labatt Distributors can expand on this information and likely scenarios.

One potential Acquirer is Guinness. If, as a result of the acquisition, Guinness decides to discontinue the distribution arrangements with the current distributors of the Labatt Brand beer in Canton, Cleveland, Youngstown and Mansfield, Ohio, Guinness likely will consolidate the actual distribution of the Labatt Brand beer with distributors who presently also distribute other brands currently sold by Guinness. This result will shift the share of the imported beer market among the distributors for the Labatt Brand products and its competitive brands from 20% to 40% and, in a certain market, one distributor will have 60% to 90% of the market. For example, in the Ohio markets of Canton, Cleveland, Youngstown and Mansfield, the purchase of the Labatt Brand by Guinness and a change of the distribution of the Labatt Brand products from current distributors to the existing distributors of Guinness products would likely increase the market share for imported beers in those respective markets by 32%, 30%, 23% and 26%, respectively. Again, this consolidation of market share would give the current distributors of the Acquirer market power sufficient to increase price for the Labatt Brand products to consumers independent of the fact that Guinness owned the brand instead of the combining companies.

Other potential Acquirers are independent investor groups with little or no experience in the relevant markets. If this Acquirer terminates the Labatt Distributors and

attempts to distribute the Labatt Brand through distributors which also sell products competitive to the Labatt Brand products, the results will likely be, similar to the example with Guinness as the Acquirer, a lessening of competition and an increase in prices. Such results are likely compounded by the specific strategy needs of the independent investor group/Acquirer.

CONCLUSION

For the foregoing reasons, the comments of the Labatt Distributors are limited and only bear on issues ''around the edges'' of the Proposed Final Judgment. Indeed, the Labatt Distributors believe that their comments are consistent with the Division's intent as expressed in the Proposed Final Judgment. In short, the Acquirer of the Divested Assets must maintain the Labatt Brand as a Canadian import and must adopt and continue specific strategies for the Division to achieve its goal. One material risk presented by the current language of the Proposed Final Judgment is that the Acquirer will terminate some or all of the existing distributors of the Labatt Brand products. This is likely to lead to increased consolidation at the distributor level and weaken the Labatt Brand as a viable competitor. Such a result will increase concentration in the relevant market and likely result in higher and less-competitive pricing. The simple solution is to require the Acquirer to maintain the existing distribution network for the Labatt Brand products for a commercially reasonable period of time. Implementation of changes consistent with these comments will increase the likely success of the divestiture.

Thank you.

Sincerely,

James Coyne King.
JCK/kjb—518505
January 22, 2009

By Hand

Joshua H. Soven, Esq.,
Chief, Antitrust Division, Litigation I Section, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, D.C. 20530.

Re: Written Comments on Proposed Final Judgment/*United States of America* v. *InBev N.V./S.A., et al.* , U.S.D.C. for D.C., Case: 1:08–cv–01965/

Dear Mr. Soven:

I represent Onondaga Beverage Corporation (''Onondaga''), a wholesale beer distributor based in Syracuse, New York, which distributes the Labatt brands of beer (the ''Labatt Brand'') in its upstate New York territory. As indicated in the January 15, 2009 letter from James C. King on behalf of certain Labatt Distributors, Onondaga shares some of the concerns expressed in Mr. King's letter. In addition, I represent Rochester Beer & Beverage Corp. of Rochester, New York, McCraith Beverages, Inc. of Utica, New York, and Owasco Beverage, Inc. of Auburn, New York, who join in this letter as well. I am further authorized to state that Seneca Beverage Corp. of Elmira, New York and Rocco J. Testani, Inc. of Binghamton, New York also join in these comments. All of these firms distribute the Labatt Brand in their respective territories.

We provide this letter to discuss, in greater detail, our concerns on the Proposed Final Judgment in the above-referenced action, which requires InBev to divest all assets associated with the Labatt Brand (''Labatt Brand'') consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(c).

These comments outline the views of our clients relating to the Complaint, the Competitive Impact Statement and the Proposed Final Judgment in the above-referenced action relating to the acquisition by InBev N.V./S.A. (''InBev'') of the Anheuser-Busch Companies, Inc. (''Anheuser-Busch''). Our clients are available to meet with you and are prepared to supplement and expand upon the comments set forth in this letter if that would be helpful to the Division.

Purpose

Let me emphasize first that our clients, as Labatt distributors, share the Division's goal, as set forth in the Proposed Final Judgment, of preserving the Labatt Brand as a viable brand and as a competitor of the products of Anheuser-Busch and other brewers in the relevant markets. The primary purpose of these comments is to ensure that the goals of the Proposed Final Judgment are achieved, so as to maximize the positive competitive impact of the divestiture. Our comments focus on one principal area of concern, which we view as critical to the Labatt Brand continuing as a viable competitive force in the upstate New York market area: the need to maintain the Labatt Brand as a Canadian imported beer.

The Labatt Brand is a unique product, with a specific set of characteristics that have made the brand appealing and enabled it to compete effectively with other beers in the upstate New York market area, particularly those areas near the Canadian border. The Labatt Brand derives brand equity and successful market position from its status as a high-quality Canadian import, as its greater popularity along the Canadian border demonstrates. Indeed, as we show below, the Labatt Brand has consistently advertised so as to emphasize its Canadian origin.

The Labatt Brand also is sold at prices closer to that of domestic premium beer brands, such as Budweiser, Miller and Coors, than most imported beers, which are generally higher-priced. That market positioning, as a Canadian import for the price of a domestic, has been the linchpin to the Labatt Brand's success. Any significant change in this brand identity will harm the Labatt Brand as a competitor and adversely affect competition in the relevant geographic markets.

Background

As proposed, InBev's acquisition of Anheuser-Busch would eliminate substantial, direct competition between InBev and Anheuser-Busch in Buffalo, Rochester and Syracuse, New York, as well as in other regions where the Labatt Brand is a significant competitive force. For the reasons set forth in the Competitive Impact Statement, the proposed Final Judgment requires InBev USA LLC (''IUSA'') to divest the Labatt Brand, and grant the Acquirer a license to brew, market, promote and sell Labatt Brand products for consumption in the United States as a condition for InBev proceeding with its $52 billion acquisition of Anheuser-Busch. The essential reason for requiring the divestiture is that the transaction, absent divestiture, would likely lead to higher prices for beer in the Buffalo, Rochester and Syracuse, New York metropolitan areas and possibly in other areas where the Labatt Brand has significant market share, because the Labatt Brand's and Anheuser-Busch's offerings collectively constitute a substantial percentage of those markets.

As alleged in the Complaint, the Buffalo, Rochester and Syracuse beer markets are highly concentrated. We estimate market shares in the Syracuse, Rochester and Buffalo markets as follows:

	Anheuser-Busch (percent)	MillerCoors (percent)	Labatt USA (percent)
Syracuse	28.0	32.0	21.0
Rochester	29.0	24.0	24.0
Buffalo	30.0	23.0	27.0

According to the Complaint, the supply responses from competitors or potential competitors would not likely prevent the anticompetitive effects of the proposed acquisition. Competition from other competitors is insufficient to prevent a small but significant and non-transitory price increase implemented by the combined entities in those markets from being profitable. Both the Competitive Impact Statement and the Complaint noted that ''[e]ntry of a significant new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly-important brand acceptance necessary to proceed.'' Statement at 6; Complaint at para. 25. Furthermore, even if a new competitor *did* enter the marketplace, the Complaint emphasized that such a ''new entry is not likely to prevent the likely anticompetitive effects of the proposed acquisition.'' (Complaint at para. 25).

The remedy set forth in the Proposed Final Judgment for this anticompetitive aspect of

the InBev acquisition of Anheuser-Busch is to require InBev to divest the Labatt Brand and grant a perpetual license to the Acquirer to sell Labatt Brand products for consumption throughout the United States, as well as to assign additional rights and contracts necessary to maintain the viability of the Labatt Brand. These rights include an exclusive, perpetual, assignable, transferable, and fully-paid-up license that grants the Acquirer the rights to (a) brew Labatt Brand products in Canada and/or the United States, (b) promote, market, distribute and sell Labatt Brand products for consumption in the United States, and (c) use all the intellectual property rights associated with the marketing, sale, and distribution of Labatt Brand products for consumption in the United States.

The Proposed Final Judgment ensures the uninterrupted sale of Labatt Brand products in the United States by ''requiring defendants to divest all rights pursuant to distributor contracts, and at the option of the Acquirer, to negotiate a Transition Service Agreement of up to one year in length, and to enter into a supply contract for Labatt Brand products sufficient to meet all or part of the Acquirer's needs for a period of up to three years.'' Competitive Impact Statement at 8 [Emphasis added]. As we discuss below, however, the three-year time limit on the supply agreement, the resulting shift in the brewer of the Labatt Brand after three years if not sooner, and the possibility that the Labatt Brand might be brewed in the United States contain the seeds of destruction of the Labatt Brand as a viable competitor in the upstate New York markets that were the Division's principal concern.

Comments and Rationale

As the Proposed Final Judgment and Competitive Impact Statement make clear, the goal of the Labatt Brand divestiture will only be realized if the Acquirer of the Labatt Brand assets maintains the brand as a viable competitor for Anheuser-Busch products in the relevant markets. If the Labatt Brand does not remain a viable competitor, the relevant upstate New York beer markets will fall victim to the concentration and anticompetitive price increases the Division is seeking to avoid through the divestiture ordered by the Proposed Final Judgment.

Under the Proposed Final Judgment, the Acquirer can purchase the Labatt Brand brewed by InBev in Canada for three years. After that time, the Acquirer must find a new brewery. As set forth in the Proposed Final Judgment, the Acquirer could change brewers or even elect to brew the Labatt Brand in the United States, from the outset. As set forth below, such a decision would make it impossible to maintain the Labatt Brand as a competitive brand.

We attach to this letter a letter from Michael J. Mazzoni, an expert consultant in the beer industry with in-depth experience in the sales, marketing and distribution of imported and domestic beers at both the brewer-importer and the wholesale distributor tiers of the industry (the ''Mazzoni Letter''). Mr. Mazzoni describes the disastrous effect on the Labatt Brand from the loss of authenticity that will result if the brewing of the brand shifts to another brewer, and especially if the Canadian identity that is the core of its brand equity is lost by shifting production to the United States.

Divestiture Only Remedies Antitrust Violations If the Divested Business Remains Viable Thereafter

In considering remedies for antitrust violations, the Courts, the Division and the FTC have uniformly recognized that the viability of a divested business line as a competitor is crucial to the usefulness of divestiture as a cure for an antitrust violation. *See, e.g., Utah Public Service Comm'n* v. *El Paso Natural Gas Co.*, 395 U.S. 464, 470 (1969) (''The purpose of our mandate was to restore competition in the California market. * * * [t]he object of the allocation of gas reserves must be to place New Company in the same relative competitive position vis-à-vis El Paso in the California market as that which Pacific Northwest enjoyed immediately prior to the illegal merger.''). Indeed, post-transaction viability is the *sine qua non* of a curative divestiture. *See, e.g., White Consol. Indus.* v. *Whirlpool Corp.*, 612 F.Supp. 1009, 1028 (N.D. Ohio 1985) *vacated after compliance* by 619 F.Supp. 1022 (holding that company acquiring divested assets must (1) have capacity to compete effectively and (2) be free to operate divested business absent control by seller). The Courts, the Division, and the FTC have fashioned hold separate orders, like the Stipulation in the above-referenced action, to maintain the viability of the business which is the subject of a divestiture as a competitor in the relevant markets.

The Acquirer of the Divested Assets Must Maintain the Labatt Brand as a Canadian Import

Our clients are concerned that certain potential Acquirers of the Labatt Brand are not good fits, and could diminish the Labatt Brand as a competitor for Anheuser-Busch and MillerCoors in the relevant markets for reasons that may suit the potential Acquirers' economic interests but will not preserve the competitive viability of the Labatt Brand in the long term. While the Order correctly leaves to the Acquirer to decide the brand promotion and strategy to pursue, we wish to make certain that the Division and the Court understand that the Labatt Brand garners its brand equity, and, in turn, much of its market strength, from the fact that it is a high-quality Canadian import sold at the price of domestic premium beers.[1] This Canadian import status is the defining characteristic of the Labatt Brand (see advertising examples below) that any Acquirer must preserve if the goal is to maintain the Labatt Brand as a viable competitor in the relevant markets.

We request that the Proposed Final Judgment be modified to give the Acquirer the right to extend its right to purchase the Labatt Brand brewed by InBev (which, after all, will still be brewing it for sale in Canada and elsewhere) in Canada beyond the three-year period, and in any case to ensure that the Acquirer brews the Labatt Brand in Canada and so maintains the Labatt Brand as a Canadian import.

[1] See also Mazzoni Letter at 1.

Short-Term Economic Incentives of Purchasers May Be at Odds with the Long-Term Competitive Viability of the Labatt Brand

Certain potential acquirers[2] with excess U.S. brewing capacity have economic incentives to shift the brewing of the Labatt Brand to their United States facilities that are unrelated to maintaining the Labatt Brand as an effective competitor. Because unused brewing capacity is extremely costly to any U.S. brewer, and filling unused brewing capacity is economically efficient in the short term, such a brewer can reduce the costs of its existing domestic products by brewing the Labatt Brand in its unused U.S. brewery capacity. This will help the brewer to get through difficult economic times, and to improve the competitiveness of its domestic brands, but these smaller brands cannot replace the Labatt Brand as a major competitive force in the key upstate New York markets. The disastrous long-term consequences of such a move for the Labatt Brand may be outweighed for the brewer by the benefits for its other products, but the resulting loss of the Labatt Brand as a viable competitor will have precisely the anticompetitive effects divestiture was intended to prevent. While such a step might benefit the Acquirer, it would not fulfill the Division's purpose of preserving the Labatt Brand as a viable competitor in the markets in which it is a strong competitor today.

The Labatt Brand's market position is based on its identification as a high-quality Canadian import brand, and its brand equity has been developed over many years by advertising emphasizing its Canadian origin. Losing that brand equity would destroy the identity of the Labatt Brand, insulting brand loyalists[3] and rendering it a domestic brand with no distinguishing characteristics. Additionally, it is likely that MillerCoors Brewing Company would use advertising to inform U.S. Consumers that its own Molson brands were the only authentic Canadian beers brewed in Canada and sold in the U.S. Labatt could not remain a viable competitor were this to occur. If the Labatt Brand fails, the market share data and economics of distribution indicate that its distributors will likely fail as well in the key upstate New York markets.[4]

Löwenbräu Failed as a Competitive Import When Miller Acquired It and Shifted Production to the U.S.

The decline of the Löwenbräu Brand is an example of a Purchaser with unused U.S. brewing capacity acting on its economic incentive at the expense of the long-term viability of the brand. In the 1970s, the image and authenticity of Löwenbräu beer, then one of the nation's leading imported beers, was severely damaged after it was bought by the Miller Brewing Company, which moved production from Munich to its American

[2] Currently, there are potential Purchasers with unused U.S. brewing capacity. One example of such a potential purchaser is High Falls/Genessee. See Mazzoni Letter at 3.

[3] See Mazzoni Letter at 2.

[4] See market share data at page 2 above and Mazzoni Letter at 1.

breweries. See, New York Times, ''With Some Risk To Its Image, Altoids Is Moving to the U.S., Bosman, J., October 5, 2005.[5] The Löwenbräu Brand, once an effective competitor in the import space, effectively disappeared when it began being brewed in the U.S. and never recovered, even after the brand was taken over in 1999 by Labatt Breweries of Canada. As the New York Times noted, ''[a]ny whiff of inauthenticity can damage a brand in the case of finicky beer drinkers, *for whom the line between domestic and imported brands is sacrosanct.*'' *Id.* (emphasis added). As Mr. Mazzoni notes, the loss of authenticity vastly outweighed the lowered cost, and the brand disappeared as an effective competitor. The result was similar for Wurzburger Hofbrau, another German beer, when Anheuser-Busch began to import it in bulk for repackaging in the U.S. If Labatt is permitted to be brewed in the U.S., its demise as a viable competitor will be assured. (Mazzoni Letter at 2–3.)

Canadian-Origin Emphasis in the Marketing of Labatt

The Labatt Brand has deep roots as a Canadian-brewed beer, starting with its founder John Kinder Labatt, who purchased the Simcoe Street brewery in London, Canada in 1847. During the Canadian prohibition from 1915 through 1927, the Labatt brewery survived by exporting its product and by producing ''temperance ales'' (brews with less than two per cent alcohol) for sale in Ontario. In 1979, Labatt Blue claimed the top spot in the Canadian beer market, a position it has held ever since.

The Labatt Brand has continuously and emphatically emphasized its deep Canadian roots in its advertising and product placement. Labels of Labatt Blue, Labatt Blue Light and other Labatt products prominently feature a distinctive red maple leaf design synonymous with the Canadian national flag, with the words ''IMPORTED,'' ''IMPORTED DAILY FROM CANADA'' or ''CANADA'S PILSNER'' in block print on the face of the label. (See Exh. A.). Print advertisements and bar decorations for Labatt, such as branded mirrors and neon signs, also prominently feature the Canadian maple leaf and the words ''Imported,'' ''Imported from Canada'' or ''IMPORTED DAILY FROM CANADA.'' (See Exh. B.). Commemorative bottles of Labatt have featured the actual Canadian national flag (See Exh. C.). Labatt has also had a long history of support for ice hockey, the national winter sport of Canada, by sponsoring the 1972 Summit Series as well as four Canada Cup international ice hockey tournaments. (See Exh. D.).

Several television commercials for Labatt Blue in the United States feature a popular character in a bear costume, involved with Labatt Blue in various ways (on the golf course, in a bar, on a date, etc). In one commercial, the announcer proclaims ''Today, Labatt announced the extension of Labatt Blue into the U.S. market,'' to which the bear character reacts with surprise, departs the woods of Canada, and proceeds to tour the United States talking to people about Labatt Blue. The bear tells one American citizen, ''I love Canada; it's my home'' but proclaims that he can ''get the best part of Canada and live in the States.'' The commercial closes with a glass of beer in front of a waving Labatt Blue flag featuring the red Canadian maple leaf, as the announcer states ''Labatt Blue. Pure Canada.'' (See Exh. E.).[6]

In another television commercial, the bear character receives a gift of a red and white necktie covered with the distinctive Canadian maple leaves. (See Exh. F.).[7] In another commercial, the bear character gulps down a Labatt Blue immediately after the beer is introduced to the viewers as ''The clean, crisp lager imported daily from Canada.''[8] In another, the bear character serves Labatt Blue in a bar, calling it ''Canada's finest.''[9] Another, not involving the bear character, prominently displays an entire refrigerator full of the product with the caption ''IMPORTED DAILY FROM CANADA.'' (See Exh. G.).[10] In another commercial, the bear character carries a six-pack of Labatt Blue to a party and is introduced as being ''from Canada.'' The advertisement asks ''want your own taste of Canada?'' and states ''you can win your own lodge in the Labatt Blue Lodge Sweepstakes.'' (See Exh. H.).[11]

Other television commercials feature realistic talking animals (fish, deer) who plead with humans to enjoy themselves outside, as the voiceover urges, ''imported daily from Canada * * * come on up'' (See Exh. I.).[12] In a 1994 television commercial not involving any animal characters, a Canadian man sits in his back yard imagining the U.S./Canada border crossing station (pictured in Exh. J.)[13] thinking the following thought, which is read as a voiceover:

Sometimes I wish my back yard stretched right up to the U.S.-Canadian border. I'd sit on my lawn chair with a cold Labatt Blue. I'd watch some tourists, flash a smile at our customs agents, and taunt and tease the Americans with perhaps the finest example of a true Canadian lager. And if that doesn't rile them, I'll just stick in a tape of last year's World Series. Or, maybe the one before that.

Labatt's international advertisements[14] focus on Canadians doing a hard day's work (or a fun night of partying) in actual Canadian cities, as stated in the advertisements, including a helicopter rescue of a bear cub in ''Wawa, Ont.'' (See Exh. K.), a sunset campfire on the beach in ''Point Prim, P.E.I.'' (See Exh L.), at ''Expo '86, Vancouver'' (See Exh. M.), and roadies setting up a concert in ''Vancouver, B.C.'' (See Exh. N.), among other Canadian locations.

The ''Free Market'' Will Not Protect the Labatt Brand

The Department and the Court should not rely on the ''free market'' to address the significant possibility that the Acquirer will not maintain the Labatt Brand as a Canadian import. With the sale volume and other relevant factors specific to the Labatt Brand products, the Acquirer's options are limited. Our clients are not aware of breweries with substantial capacity in Canada other than InBev's Labatt Brand brewery and Molson/Coors' breweries. Neither InBev nor Molson/Coors will have an incentive to assist the Acquirer in maintaining the Labatt Brand. Other Canadian breweries are likely too small to replace the approximately 20 million cases of the Labatt Brand products sold in the United States each year. Even if another Canadian brewer could be found, the loss of the economies of scale resulting from InBev's production of the same beer for the Canadian market will result in higher prices for the Labatt Brand in the U.S. (See Mazzoni Letter at 3.)

Conclusion

The comments of our clients are limited and only bear on issues concerning one specific aspect of the Proposed Final Judgment. We believe that our comments are consistent with the Division's intent as expressed in the Proposed Final Judgment. In short, the Acquirer of the Divested Assets must maintain the Labatt Brand as a Canadian import, and ideally continue to have the Labatt Brand continue to be brewed by InBev's Canadian Labatt brewery, if the Division is to achieve its goal.

One material risk presented by the Proposed Final Judgment is that an Acquirer with excess U.S. brewing capacity will use the Labatt Brand to fill that capacity in order to obtain short-term economic benefits at the long-term expense of the Labatt Brand. This will weaken—and likely cripple—the Labatt Brand as a viable competitor. Such a result will increase concentration in the relevant market and likely result in higher and less-competitive pricing.

The simple solution is to give the Acquirer the right to extend its right to purchase the Labatt Brand brewed by InBev (which, after all, will still be brewing it for sale in Canada and elsewhere) in Canada beyond the present three-year period, and, in any event, to ensure that the Acquirer maintains the Labatt Brand as a Canadian import. Implementation of changes consistent with these comments will increase the likely success of the divestiture.

[5] Available at: *http://www.nytimes.com/2005/10/05/business/media/05adco.html?_r=1&scp=1&sq=altoids%20bosman&st=cse.*

[6] Copies of these commercials are included in the DVD–ROM marked as ''Exhibit O,'' and are also available on the Internet at Youtube.com. See Exhibit O, Folder 1. Also available at: *http://www.youtube.com/watch?v=rmb8NK3oZZQ.*

[7] See Exhibit O, Folder 2. Also available at: *http://www.youtube.com/watch?v=xK01QWA27H8&NR=1.*

[8] See Exhibit O, Folder 3. Also available at: *http://www.youtube.com/watch?v=cKQ3Fnkdplg&feature=related.*

[9] See Exhibit O, Folder 4. Also available at: *http://www.youtube.com/watch?v=llgGjoTL7TI&feature=related.*

[10] See Exhibit O, Folder 5. Also available at: *http://www.youtube.com/watch?v=HntrObODHqQ&feature=related.*

[11] See Exhibit O, Folder 6. Also available at: *http://www.youtube.com/watch?v=IQ9IsiZqkGg.*

[12] See Exhibit O, Folder 7. Also available at: *http://www.youtube.com/watch?v=fPrS5USJ4VM.*

[13] See Exhibit O, Folder 8. Also available at: *http://www.youtube.com/watch?v=HjGYbGe1VwE.*

[14] See Exhibit O, Folder 9. Also available at: *http://www.youtube.com/watch?v=miTfUrJ6VKA.*

Thank you for your consideration.
Sincerely,

Andre R. Jaglom.
M.J. Mazzoni, Inc.
2637 Northwind Road, Lexington KY 40511, Phone: (859) 294–6888, Fax: (859) 294–0336, e-mail: mazzco@windstream.net.

January 22, 2009

Andre R. Jaglom
Tannenbaum, Helpern, Syracuse & Hirschtritt, LLP, 900 Third Avenue, New York, NY 10022.

Dear Mr. Jaglom:

As you requested, I have reviewed the potential impact of the Department of Justice's required divestiture of Labatt U.S.A. (LUSA) by INBEV N.V./S.A. (INBEV) as a condition to the INBEV acquisition of Anheuser-Busch, Inc. My qualifications regarding this assignment are described in the attached curriculum vitae.

Specific to the Department of Justice ruling, the required divestiture of LUSA by INBEV, as presently constructed, will have two unintended consequences. These will result from the fact that the divestiture order contemplates that the acquirer must find alternative brewing arrangements for the Labatt brands within three years, and may do so immediately. The first unintended consequence will be the loss of authenticity as a true Labatt product and, if brewed in the U.S., as a Canadian imported beer. It is important to emphasize that ''Canadian Import'' is the core of the Labatt brand identity. The second unintended consequence, ironically contrary to the intent of the divestiture order, will be an increase in the price of the Labatt brands for consumers, not only in New York and the northern tier markets, but throughout the U.S. Combined, the loss of authenticity and higher prices will prevent the Labatt brands from continuing as viable competitors in those U.S. markets in which they are now a strong competitive force. The result will be a reduction in competition in these markets and a substantial negative economic impact on all current Labatt distributors (regardless of whether they also distribute for Anheuser-Busch, Miller/Coors, or any other suppliers). This will ultimately result in the elimination of jobs, decreased profitability, loss of equity value and, in some cases, distributor failure. These consequences will be the result of two dynamics: a significant loss of volume and the higher cost of goods sold to distributors—both of which are inevitable if the acquirer shifts production away from the current Labatt brewery, whether after three years or sooner. The result will be even more extreme if production is shifted out of Canada and into the United States.

Having the Labatt brands brewed by anyone other than the Labatt Brewing Company Limited (''Labatt Canada''), and especially by a brewery in the U.S., will raise the very real issue of authenticity. Labatt Canada is an iconic company. Sourcing the Labatt brands from any other brewer, and particularly any brewer outside of Canada, would negate the authenticity of the beer sold in the U.S. and it should be expected that significant numbers of Labatt drinkers would reject the product on that basis. It can also be assumed that if Labatt is brewed in the U.S., the MillerCoors Brewing Company would use advertising to inform U.S. consumers that its own Molson brands were the only authentic Canadian beers brewed in Canada and sold in the U.S. This would be a powerful message which would certainly drive consumers that prefer Canadian beers from the Labatt brands.

The worst possible scenario for the Labatt brands and U.S. distributors would be contract brewing the Labatt brands from a U.S. supplier or having a brewer acquirer brew the Labatt brands in its own U.S. brewery. Simply stated, the overwhelming majority of Labatt consumers drink Labatt because the brands are Canadian. While any Canadian contract brewer other than Labatt Canada would create problems for the brands regarding authenticity, Labatt brewed in the U.S. would be insulting to the Labatt brands' loyalists. All of the Labatt brands' packaging, promotion, and advertising prominently uses the word ''Canada'' and emphasizes their Canadian origin. Indeed, the Labatt advertising slogan is ''imported daily from Canada''. It is important to note that the consumer has been constantly and consistently presented with Canada as the country of origin; and, Canada is also a concept in itself which is reinforced in Labatt advertising by imagery including blue skies, water, crispness, bears, cold, and the bigness of the country. Canada is the primary marketing component of the Labatt equity which has been promoted by LUSA, its importer predecessors and the U.S. distributors for decades.

The situation is reminiscent of the demise of the Lowenbrau brand in the 1970s. Lowenbrau, an authentic German beer, was among the leading imported beers in the United States at that time. After Lowenbrau was acquired by the Miller Brewing Company (Miller), production was shifted from Germany to Miller breweries in the U.S. Miller's objective was to reposition the brand at domestic super premium levels based on their assumption that reducing prices for this well-respected brand would result in a consumer buying frenzy. While this initiative did allow Miller to lower production costs and save freight, therefore, effectively reducing the price of the beer, its authenticity as a German imported beer was demolished. U.S. brewed Lowenbrau rapidly lost volume and market share, going from one of the leading and most respected imported beers to an insignificant market presence in a matter of a few years. The failure of Lowenbrau was the unintended consequence of Miller Brewing Company's sacrificing authenticity for cost and convenience. It should also be noted that Anheuser-Busch, Inc. had a similar experience and result when it tried to import Wurzburger Hofbrau (another German beer) in concentrated bulk for repackaging at its U.S. breweries. Consumers flatly rejected Wurzburger Hofbrau as unauthentic. The same consequences can be expected for the Labatt brands on a much larger scale because of their higher volume and margin contribution if production is shifted to the United States.

In view of this not-so-distant beer industry history regarding Lowenbrau and Wurzburger Hofbrau, one would expect any acquirer of the Labatt brands to recognize the need to keep production in Canada. Dynamics beyond marketing and sales implications, however, create the possibility that a small U.S. brewer could realize short term operating benefits to the brewer which would likely be far less than the long term harm to the many U.S. Labatt distributors and to viable competition from the Labatt brands. It is rumored that the High Falls Brewing Company/Genessee Brewing Company of Rochester, New York is among the potential acquirers and other small brewers have also been mentioned. Their sole interest would be to increase production to create economies and efficiencies which would lower cost for their domestic brands. The tradeoff between short term brewing profits for a small U.S. brewer and Labatt brand authenticity would be a poor bargain for the U.S. Labatt distributors and consumers.

In addition to the concern about brand authenticity, without question, Labatt Canada is the lowest cost producer for the Labatt brands. The scale advantages from the Labatt volume sold in Canada ensure that all packaging and raw materials will always be cheaper for Labatt Canada than for any other contract brewer. In this case, the cost advantage is magnified because Labatt Canada's transfer price to LUSA was essentially at cost which allowed LUSA to spend more for advertising and sales promotion in the U.S. Any contract brewer to the Labatt licensee (including Labatt Canada) will include a brewing profit margin (estimated at 15–20%) which will be passed through to distributors. Further, the licensee will still have advertising and sales promotion expenses to support the brands, as would any brewer or importer. If brewing is shifted to another Canadian brewer, the cost of freight will also increase to most U.S. distributors because the likely contract brewers in Canada are located further from the majority of the Labatt volume than is Labatt Canada. Finally, it must be assumed that the acquirer of LUSA will have significant debt service which could also result in higher prices to distributors (or lower marketing support). Regardless of the contributing factors, a higher cost of goods for the Labatt U.S. distributors will create higher prices to consumers which will, in turn, cause volume declines for the Labatt brands. The likely (and most serious) scenario for distributors as a result of higher product cost will be lower margins and declining sales volume.

The impact of higher consumer prices for the Labatt brands must also be considered in the context of historical price positioning in northern tier markets. The Labatt brands have always been positioned at the price point of the leading domestic (U.S.) premium beers which include Budweiser, Bud Light, Miller Genuine Draft, Lite, Coors, and Coors Light and Labatts' primary Canadian competition, the Molson Canadian brands. Forcing the Labatt brands to price points above historical competition would create a price value anomaly for Labatt drinkers and many will choose other premium priced beers instead of their customary Labatt brand. This would have an immediate and permanent negative

impact on brand volume and competiveness and, therefore, distributor profitability and viability.

While some price increase is unavoidable given the divestiture, permitting the acquirer to continue to have the Labatt brands brewed by Labatt Canada, and requiring Labatt Canada to continue to brew them, beyond the current three year horizon will minimize that increase, because of the economies of scale provided by Labatt Canada's production for the Canadian market.

Conclusions:

If the Labatt brands are brewed by any brewer other than Labatt Canada, the volume and margin in the northern tier markets will likely decline by 30–50% within three years. The decline will be steeper if the Labatt brands are brewed in the U.S. The result will be the demise of an effective competitor—precisely the opposite of the intended purpose of the divestiture. The implications for the northern tier Labatt distributors are obvious. The Department of Justice must recognize that most of the northern tier distributors have sold the Labatt brands for many years and that volume and margin contribution is critical to each independent business. In fact, for many distributors, the Labatt portfolio contributes more than 50% of total gross margin (in the case of Rochester, which has no other major supplier, the Labatt brands are more than 80% of total gross margin) and the loss of 30–50% of gross margin would severely impact profitability, jobs, competitiveness and the value of the business(es). The potential for this to become reality is a virtual certainty if the licensee contracts any brewer except Labatt Canada, especially if production is shifted to the U.S.

Therefore, if the divestiture is enforced, the licensee should be permitted to contract the brewing for the Labatt brands from Labatt Canada well beyond the present three year period, and Labatt Canada should be required to continue to brew the Labatt brands for the acquirer. This is the only way to ensure the lowest possible transfer price to distributors, maintain brand authenticity, promote healthy competition, ensure each current distributor's business viability, preserve distributor equity, and protect consumers from higher prices.

Michael J. Mazzoni
MJM/nm

M.J. MAZZONI C.V.

M.J. MAZZONI is an independent broker specializing in the valuation, purchase and/or sale of U.S. malt beverage distributors. Additionally, Mazzoni works with brewers in North America and Asia advising on sales organization and strategy, distributor relations, and long-range planning. Brewer/Importer clients include Heineken, U.S.A.; Cerveceria Cuauhtemoc Moctezuma S.A. de C.V., and D.G. Yuengling and Son, Inc. Mazzoni is also an active and founding partner of SEEMA International, Ltd., a Hong Kong consultancy specializing in strategic planning for multi-national brewers doing business in China and other Asian countries.

After receiving a Masters Degree in Business Administration in 1973, Mazzoni joined the beer industry and held a variety of sales, marketing and general management positions with Anheuser-Busch, Inc. (1973–80), The Pabst Brewing Company (1980–82) and Barton Beers, Ltd. which he established in 1983. Under his direction, Barton Beers, Ltd. became the second largest beer importer (Corona) in the U.S. within four years. The success of Barton Beers, Ltd. led to a management buyout of the company's parent, Barton Brands, Ltd. (a distilled spirits and wine company) in 1987 and Mazzoni participated in the buyout as a principal in the transaction.

Since selling his interest in Barton, Inc. in 1991, Mazzoni has been an investor-partner in AFP, Inc., an Ohio beer distributorship (1992–2000); worked as a consultant assisting the Miller Brewing Company (1993–2002) with its distribution system reorganization, sales strategies, and distributor reconfiguration wherein he negotiated and facilitated the purchase and/or sale of independent Miller beer distributorships (including Miller-owned branch operations) and the sale or exchange of individual brand rights between distributors throughout the U.S. Mazzoni thus has in-depth experience in the sales and marketing of domestic and imported beers at both the supplier and wholesale distributor tiers of the industry.

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Anthony S. Kogut,
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January 16, 2009

Via Hand Delivery and U.S. Mail

Mr. Joshua H. Soven, Esq.
Chief
Litigation I Section
Antitrust Division
U.S. Department of Justice
1401 H Street, NW
Suite 4000
Washington, DC 20530

RE: Written Comments on Proposed Final Judgment United States of America v InBev N.V./S.A., et al. U.S.D.C. for D.C., Case: 1:08-cv-01965

Dear Mr. Soven:

This letter is submitted on the Proposed Final Judgment in the above-referenced action which requires InBev N.V./S.A. to divest all assets associated with the Labatt Brand consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. Sec. 16 (b)–(c).

This office represents Tri-County Beverage Company, a Labatt USA wholesaler headquartered in Dearborn and Warren, Michigan. Tri-County Beverage services the Detroit, Michigan, metropolitan area which is an important market for the Labatt Brand. The Labatt Brand is a critical and integral component of Tri-County Beverage's portfolio, with the Labatt Brand accounting for about 50% of Tri-County Beverage's annual sales (approximately 2.5 million cases out of 5.5 million cases of total sales).

We are in receipt of a copy of the January 15, 2008 letter sent to you by Mr. James Coyne King on behalf of his clients, Esber Beverage Company, RL Lipton Co, and Tri County Distributing, Co. We write because we share many of the concerns raised by Mr. King in his letter.

We agree with the observation that the Acquirer of the Labatt Brand must be well-positioned to support and market the Labatt Brand ''so that the position of the Labatt Brand is maintained and enhanced.'' The Labatt Brand is a niche product with a specific set of characteristics that make the Brand appealing in particular markets, such as Michigan. Much of the Labatt's Brand competitive position derives from its status as a Canadian import. As such, it is particularly popular in states (such as Michigan) which border or are in close proximity to Canada. We agree that the ''Labatt Brand products also have a price point more akin to domestic premium brands * * * than most imported beers''. The Labatt Brand market position, as a Canadian import for the price of a domestic, has been the ''lynchpin'' of the Labatt's Brand success. (See page 2 of Mr. King's letter). We concur in the comments made on pages 4 through 6 of Mr. King's January 15th letter which support the concept ''that the viability of a divested business line as a competitor is crucial to the usefulness of divestiture as a cure for an antitrust violation'' and his comments concerning the need to have a viable Acquirer to effectuate that principle and reach that goal of divestiture.

Wholesalers have spent many years—with a commensurate expenditure of time, money and effort—nurturing and building the Labatt Brand to make it the success it is today in states like Michigan. For example, Tri-County Beverage spent approximately $400,000 to advertise and promote the Labatt Brand in 2008 to complement the approximately $2 million dollars spent by Labatt to advertise and promote the Labatt Brand in metropolitan Detroit during that same period. Similar sums were expended by Tri-County Beverage and Labatt in previous years. To maintain the Labatt's Brand competitive viability it is critical that it continue as a Canadian import and that the Acquiring entity continue the strategies and pricing which have made the Labatt Brand a success. Should an inappropriate Acquirer obtain the Labatt Brand and not follow the strategies and pricing that have heretofore made the Brand successful (through the efforts of the existing wholesaler network), it will have a devastating effect on the Labatt Brand market share and competition in the industry.

Given the well thought out submission presented by Mr. King we have kept our comments to a minimum. We urge that the referenced comments be considered to help guide the decision making process.

Tri-County Beverage stands ready and willing to meet with you or to supplement this letter with other information you may deem useful.

Thank you for your attention to this matter.

Very truly yours,

Willingham & Coté, P.C.

/s/

Anthony S. Kogut

ASK/nlh
cc: Mr. James Coyne King
Mr. Ron Feldman

[FR Doc. E9–5018 Filed 3–9–09; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on February 9, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 34 new standards have been initiated and 9 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/12–10–08.html* and *http://standards.ieee.org/standardswire/sba/01–30–09.html*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on November 17, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 11, 2008 (73 FR 75469).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–4853 Filed 3–9–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,422]

Springs Global U.S., Inc., Springs Direct Division, Springmaid Wamsutta Factory Store, Lancaster, SC; Notice of Revised Determination on Remand

On February 6, 2009, the U.S. Court of International Trade (USCIT) remanded to the U.S. Department of Labor (Department) for further review *Former Employees of Springs Global, Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina (FEO Springs Global)* v. *United States,* Court No. 08–00255.

On May 19, 2008, an official of Springs Global U.S. Inc. (subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers of Springs Global U.S. Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina (subject facility).

The subject facility closed during February 2008. Prior to the closure, workers at the subject facility managed Springs Global, U.S., Inc. (subject firm) retail operations, sold linen products manufactured by the subject firm to the public and other subject firm employees, and handled special orders for linen products placed by other subject firm employees.

The negative determination, issued on May 30, 2008, stated that in order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the subject worker group must work for a ''firm'' or appropriate subdivision that produces an article domestically and there must be a relationship between the workers' work and the article produced by the workers' firm or appropriate subdivision. The determination also stated that although the subject firm produced an article, the subject workers did not support that production. The Department determined that the subject worker group cannot be considered import impacted or affected by a shift in production of an article. The Department's Notice of determination was published in the **Federal Register** on June 16, 2008 (73 FR 34044).

The Department did not receive a request for administrative reconsideration.

In the complaint, Plaintiffs allege that workers at the subject facility, who ''provided the means by which Springs Global dispensed of manufactured goods that were not able to be sold otherwise * * * thereby enabling the company's production operations * * * to reduce their per-unit overhead and operate more efficiently,'' should be treated like the workers covered by TA–W–62,768 (Springs Global U.S., Inc., Springs Direct Division, Corporate Support Group, Lancaster, South Carolina; certified February 14, 2008). Workers covered by TA–W–63,422 are located in the same building as workers covered by TA–W–62,786.

Workers covered by TA–W–62,786 are engaged in production estimation, production scheduling, distribution, logistics, and operational services. The determination for TA–W–62,786 stated that the workers supported production at a TAA-certified facility (Springs Global U.S., Inc., Grace Complex, Bedding Division, Lancaster, South Carolina; TA–W–61,258) and that the worker separations are ''related to a shift of production and increased imports of textile products.''

The group eligibility requirements for directly-impacted workers under Section 222(a) the Trade Act of 1974, as amended, based on a shift of production are satisfied if the criteria set forth under Section 222(a)(2)(B) have been 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 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;

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 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.

On remand, the Department carefully reviewed the language of the statute, the Department's policy, Plaintiffs' submissions, and the administrative record.

The intent of the Department is for a certification to cover all workers of the subject firm or appropriate subdivision who were adversely affected by increased imports of the article

produced by the firm or a shift in production of the article, based on the investigation of the TAA/ATAA petition.

After careful review on remand, the Department determines that a significant number or proportion of the workers in the appropriate subdivision of the subject firm was separated. Further, the Department determines that these workers performed activities related to the firm's production of an article, that the firm shifted production of that article to a foreign country (and there were increased imports of like or directly competitive articles produced by the firm), and this shift in production was a factor in Plaintiffs' separations.

Based on the above, the Department determines that the group eligibility requirements under Section 222(a)(2)(B) of the Trade Act of 1974, as amended, has been met.

In accordance with Section 246 of 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 during the remand investigation, I determine that there was a shift of production from the workers' firm or subdivision to Brazil of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles. In accordance with the provisions of the Act, I make the following certification:

All workers of Springs Global U.S. Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina, who became totally or partially separated from employment on or after May 19, 2007, 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 23rd day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5040 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,932]

Keeper Corporation, Including On-Site Leased Workers of AAA Staffing, North Windham, CT, Including Employees in Support of Keeper Corporation, North Windham, CT, Working in the Following Locations: TA–W–62,364D, West Grove, PA; TA–W–62,364E, Bountiful, UT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 13, 2008, applicable to workers of Keeper Corporation, including leased workers of AAA Staffing, North Windham, Connecticut. The notice was published in the **Federal Register** on March 26, 2008 (73 FR 16064). The certification was amended on December 5, 2008 to include employees in support of the North Windham, Connecticut location working out of Lawrenceville, Georgia and Smyrna, Tennessee. The notice was published in the **Federal Register** on December 15, 2008 (73 FR 76058–76059).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cargo control products such as tie downs, towing straps and bungee cords.

New information shows that worker separations have occurred involving employees in support of the North Windham, Connecticut facility of Keeper Corporation working out of West Grove, Pennsylvania and Bountiful, Utah. Mr. Paul Delaney and Mr. William Hill provided sales functions supporting the production of cargo control products such as tie down, towing straps and bungee cords at the North Windham, Connecticut location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the North Windham, Connecticut facility of Keeper Corporation working out of West Grove, Pennsylvania and Bountiful, Utah.

The intent of the Department's certification is to include all workers of Keeper Corporation, North Windham, Connecticut who were adversely affected by a shift in production of cargo control products such as tie downs, towing straps and bungee cords to China.

The amended notice applicable to TA–W–62,932 is hereby issued as follows:

''All workers of Keeper Corporation, including on-site leased workers of AAA Staffing, North Windham, Connecticut (TA–W–62,932), all workers of Keeper Corporation, Manchester, Connecticut (TA–W–62,932A), including employees in support of Keeper Corporation, North Windham, Connecticut working out of Lawrenceville, Georgia (TA–W–62,932B), Smyrna, Tennessee (TA–W–62,932C), West Grove, Pennsylvania (TA–W–62,932D) and Bountiful, Utah (TA–W–62,932E), who became totally or partially separated from employment on or after February 28, 2007, through March 13, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also 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 February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5039 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,389]

Schulmanm, Inc. Polybatch Color Center, Sharon Center, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application received on February 4, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on December 22, 2008. The Notice of Determination was published

in the **Federal Register** on January 14, 2009 (74 FR 2139).

The initial investigation resulted in a negative determination based on the finding that imports of color concentrates did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding a shift in production of color concentrates to Mexico.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5044 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,505]

SB Acquisition, LLC, DBA Saunders Brothers, Including On-Site Leased Workers From Manpower Fryeburg, ME; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 29, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on January 2, 2009. The Notice of Determination was published in the **Federal Register** on January 26, 2009 (74 FR 4464).

The initial investigation resulted in a negative determination based on the finding that sales and production at the subject firm increased during the period of January through November 2008, when compared to the same period in 2007.

In the request for reconsideration, the petitioner provided additional information indicating that sales and production at the subject facility declined during the relevant period and that the subject firm imported products like or directly competitive with the products manufactured at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5045 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,780]

Harman/Becker Automotive Systems, Inc., Including On-Site Leased Workers From Elwood Staffing, Account Temps and PMI, Currently Known as Spartan Staffing, Martinsville, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 20, 2007, applicable to workers of Harman/Becker Automotive Systems, Inc., Martinsville, Indiana. The notice was published in the **Federal Register** on August 2, 2007 (72 FR 42436).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automotive speakers.

New information shows that workers leased from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing were employed on-site at the Martinsville, Indiana location of Harman/Becker Automotive Systems, Inc. The Department has determined that these workers were sufficiently under the control of Harman/Becker Automotive Systems, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing, working on-site at the Martinsville, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Harman/Becker Automotive Systems, Inc. who were adversely affected by a shift in production of automotive speakers to Mexico.

The amended notice applicable to TA–W–61,780 is hereby issued as follows:

All workers of Harman/Becker Automotive Systems, Inc., including on-site leased workers from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing, Martinsville, Indiana, who became totally or partially separated from employment on or after June 28, 2006 through July 20, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also 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 February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5038 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,939]

Hewlett Packard, Inkjet and Web Solutions Division; Including On-Site Leased Workers From CDI, Manpower, Securitas Security Services USA, Volt Cable Consultants, D/B/A Black Box Network Services Managed Business Solutions and 888 Consulting Group, Inc., D/B/A TAC Worldside, Corvallis, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 19, 2008, applicable to workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA and Volt, Corvallis, Oregon. The notice was published in the **Federal Register** on October 3, 2008 (73 FR 57682). The certification was amended on December 4, 2008 to include on-site leased workers from Cable Consultants, d/b/a Black Box Network Services. The notice was published in the **Federal Register** on December 15, 2008 (73 FR 76058).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of inkjet supplies, particularly in jet printer cartridge heads.

New information shows that workers leased from Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide were employed on-site at the Corvallis, Oregon location of Hewlett Packard, Inkjet and Web Solutions Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide working on-site at the Inkjet and Web Solutions Division, Corvallis, Oregon location of the subject firm.

The amended notice applicable to TA–W–63,939 is hereby issued as follows:

All workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA, Volt, Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide, Corvallis, Oregon, engaged in the production of inkjet supplies, who became totally or partially separated from employment on or after August 26, 2007, through September 19, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of February 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5041 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *February 17 through February 20, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A)—all of the following must be satisfied:

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;

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; or

II. Section (a)(2)(B)—both of the following must be satisfied:

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;

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;

2. The country to which the workers' firm has shifted production of the articles to 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.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision)

described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–64,952; Heritage Footwear, Inc., Fort Payne, AL: January 14, 2008

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–64,802; HR Solutions, LLC, Subsidiary of Affiliated Computer Services, Pittsburgh, PA: December 22, 2007

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,528; Fujifilm Manufacturing U.S.A., Inc., Greenwood, SC: November 24, 2007

TA–W–64,876; Bridgestone Americas Tire Operations, LLC, Bato Division, LaVergne, TN: January 12, 2008

TA–W–64,905; Kelsey-Hayes Company, North American Braking and Suspension Division, Leased Workers from Sizemore, Warrenton, GA: January 14, 2008

TA–W–65,147A; Bradington-Young, LLC, Hickory Plant, On-Site Leased Workers of Manpower, Hickory, NC: February 5, 2008

TA–W–65,147B; Bradington-Young, LLC, Cover Plant, Cherryville, NC: February 5, 2008

TA–W–65,147C; Bradington-Young, LLC, Frames Plant, Cherryville, NC: February 5, 2008

TA–W–65,147; Bradington-Young, LLC, Cherryville Plant, On-Site Leased Workers of PSU Personal Services, Woodleaf, NC: February 5, 2008

TA–W–65,175; Molded Dimensions, Inc., Port Washington, WI: February 6, 2008

TA–W–65,101; Kelsey Hayes Company, North American Braking and Suspension Division, Fowlerville, MI: September 12, 2008

TA–W–64,408; Theis Precision Steel Corporation, A Subsidiary of Friedrich Gustav Their Kaltwalzwerke, Bristol, CT: November 10, 2007

TA–W–64,737A; Stillwater Mining Company, Stillwater Mine, Nye, MT: December 4, 2007

TA–W–64,737B; Stillwater Mining Company, Stillwater Metallurgical Complex, Columbus Administration and Warehouse, Columbus, MT: December 4, 2007

TA–W–64,737C; Stillwater Mining Company, East Boulder Mine, McLeod, MT: December 4, 2007

TA–W–64,737; Stillwater Mining Company, Corporation Office, Billings, MT: December 4, 2007

TA–W–64,815; Pittsburgh Corning Corporation, Subsidiary of PPG, Inc. and Corning, Inc., Port Allegany, PA: January 5, 2008

TA–W–64,875; Rosboro Lumber Company, Lumber Division, Springfield, OR: November 16, 2008

TA–W–64,983; Plum Creek Northwest Lumber, Inc., Pablo Sawmill, Leased Workers of LC Staffing, Pablo, MT: January 22, 2008

TA–W–65,086; Penn Racquet Sports, Inc., A Subsidiary of HTM USA Holdings, Phoenix, AZ: February 2, 2008

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,944; Invista S.A.R.L., Leased Worekrs of Mundy Maintenance, Service and Operations, Waynesboro, VA: January 20, 2008

TA–W–64,967; ARRK Product Development Group, San Diego, CA: January 14, 2008

TA–W–64,985; JCIM, US–LLC, Formerly known as Plastech Engineered Products, Wauseon, OH: January 22, 2008

TA–W–64,988; Source Northwest, Inc., dba Source Window Coverings, Woodinville, WA: January 22, 2008

TA–W–65,039; Elcoteq, Inc., Richardson Division, Richardson, TX: January 29, 2008

TA–W–65,076; Pentair Water, Water Systems Division, A Subsidiary of Pentair, Delavan, WI: January 15, 2008

TA–W–65,163; International Textile Group, Burlington Worldwide, Cordova, NC: January 6, 2009

TA–W–65,172; Summit Polymers, Inc., Valley Plant, Portage, MI: January 23, 2008

TA–W–64,424; Schawk, Inc., Stamford Division Stamford, CT: November 12, 2007

TA–W–64,956; Citigroup Global Markets, Presentation Technologies Group New York, NY: January 20, 2008

TA–W–65,041; Alcatel-Lucent, Inc., Multicore Product Division, SSG Group Plano, TX: January 26, 2008

TA–W–65,051; Tyco Electronics, Carlisle, PA: January 29, 2008

TA–W–65,143; Goulds Pumps/ITT Industries, Ashland, PA: January 21, 2008

TA–W–65,186; Elkay Manufacturing Company, Elkay Distribution Company, Bolingbrook, IL: February 6, 2008

TA–W–65,198; Touch Sensor Technologies, LLC, Subsidiary of Methode Electronics, Leased Workers From Kay and Associates, Wheaton, IL: February 6, 2008

TA–W–65,200; DimcoGray Corporation, Molding Department Centerville, OH: February 6, 2008

TA–W–65,220; Allied Motion Motor Equipment, Owosso, MI: February 9, 2008

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA)

and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,974; Fredon Development Industries, LLC, Newton, NJ: January 23, 2008

TA–W–64,421; Pacific Automotive Components and Systems International, ImLay City, MI: November 12, 2007

TA–W–64,870; Molded Fiber Glass Co., Stevenson, WA: January 12, 2008

TA–W–64,902; Shin Etsu Handoti America, Inc., Leased Workers of Volt and Kelly Temporary, Vancouver, WA: January 14, 2008

TA–W–64,960; Pax Machine Works, Inc., Celina, OH: January 21, 2008

TA–W–65,102; Kelsey Hayes Company, North American Braking and Suspension Division Fenton, MI: February 3, 2008

TA–W–65,178; Louis Lavitt Company, Inc., Hickory, NC: February 6, 2008

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–64,952; Heritage Footwear, Inc., Fort Payne, AL

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–64,802; HR Solutions, LLC, Subsidiary of Affiliated Computer Services, Pittsburgh, PA

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–64,420; Nordyne, Inc., On-Site Leased Workers From Lifestyle Staffing Poplar Bluff, MO.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–64,186; American Polymers, Inc., Oxford, MA.

TA–W–64,793; Lukas Confections, Inc., dba The Classic Caramel Co., York, PA.

TA–W–64,846; Tracker Marine Group, LLC, Bolivar, MO.

TA–W–64,875A; Rosboro Lumber Company, Plywood Division Springfield, OR.

TA–W–64,875B; Rosboro Lumber Company, Glulam Beams Division Springfield, OR.

TA–W–65,252; Hutchinson Technology, Inc., Plymouth, MN.

TA–W–65,160; Hutchinson Technology, Inc., Hutchinson, MN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,912; Road and Rail Services, Venice, IL.

TA–W–65,013; Axcelis Technologies, Global Customer Operations, Portland, OR.

TA–W–65,021; EcoLab, Inc., Accounts Receivable Division, Research and Development Division, Eagan, MN.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–64,570; ZF Lemforder, LLC, Chicago, IL.

I hereby certify that the aforementioned determinations were issued during the period of *February 17 through February 20, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

Dated: March 3, 2009.

[FR Doc. E9–5037 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,190]

Hafner USA, Inc., New York, NY; Notice of Negative Determination on Reconsideration

On January 13, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Hafner USA, Inc., New York, New York (subject firm). The Department's Notice was published in the **Federal Register** on January 26, 2009 (74 FR 4460).

The initial determination was based on the Department's findings that the subject worker group does not support a firm or appropriate subdivision that produces an article domestically.

In order to apply for TAA based on increased imports, the subject worker group must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended. Under Section 222(a)(2)(A), 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.

29 CFR 90.2 states that a group means ''three or more workers in a firm or an appropriate subdivision thereof'' and that a significant number or proportion of the workers means ''at least three workers in a firm (or appropriate subdivision thereof) with a work force

of fewer than 50 workers.'' The regulation also states that ''increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.''

Because the petition date is October 3, 2008, the relevant period (the twelve months prior to the date of the petition) is October 2007 through September 2008 and the representative base period is October 2006 through September 2007.

The Department has carefully reviewed information submitted during the initial and reconsideration investigations. The Department determines that the petition did not cover a valid worker group (the group consisted of only two workers at the subject firm) and that, during relevant period, less that three workers were separated or were threatened with separation from the subject firm.

Based on the information above, the Department determines that the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, were not met.

Even if there was a valid worker group and the worker separation threshold was met, the Department would not have issued a certification applicable to the subject worker group.

During the reconsideration investigation, the Department confirmed that the subject firm ceased production in the United States in 2005. The North Carolina facility identified in the request for reconsideration was a marketing office. The Virginia facility identified in the request for reconsideration (Hafner LLC, a subsidiary of Hafner, Inc., Gordonsville, Virginia) was certified on May 16, 2005 (TA–W–57,119) based on a shift of production to Canada.

Because there was no domestic production during the relevant period, the Department determines that there was no domestic production that increased imports could have impacted. Further, the Department determines that there was no shift of production to a foreign country during the relevant period.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for Trade Adjustment Assistance (TAA). Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Hafner USA, Inc., New York, New York.

Signed at Washington, DC, this 24th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5042 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,280]

Eaton Corporation, Mentor, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2009 in response to a worker petition filed by a company official on behalf of workers of Eaton Corporation, Mentor, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5047 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,214]

Everett Charles Technologies, Inc., Fixture and Services Group, Longmont, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2009 in response to a worker petition filed by a company official on behalf of workers of Everett Charles Technologies, Inc., Fixture and Services Group, Longmont, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5046 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,326]

Horton Mfg. Co. LLC, Tallmadge, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed on behalf of workers of Horton Mfg. Co. LLC, Tallmadge, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5049 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65, 359]

The Modesto Bee; Ad Production Group; Modesto, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009, in response to a worker petition filed on behalf of workers at The Modesto Bee; Ad Production Group; Modesto, California.

The petitioning group of workers is covered by an active certification (TA–W–64, 860) which expires on February 11, 2011.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5036 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,339]

Pentagon Technologies Group, Inc. Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed by a company official on behalf of workers of Pentagon Technologies Group, Inc., Portland, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5050 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,299]

United States Steel Great Lakes Works, Ecorse, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed by the United Steelworkers of America, Local 1299 on behalf of workers of United States Steel Great Lakes Works, Ecorse, Michigan.

The petitioning group of workers is covered by an earlier petition (TA–W–64,773) filed on December 19, 2008 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 24th day of February 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5048 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The authority of the ACVETEO is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a business meeting on Friday, March 20, 2009 from 8:30 a.m. to 3:30 p.m., at the Omni Hotel, 401 Chestnut Street, second floor meeting room, Philadelphia, PA. The ACVETEO will discuss programs to assist veterans seeking employment and to raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans.

Individuals needing special accommodations should notify Margaret Hill Watts at (202) 693–4744 by March 9, 2009.

Signed in Washington, DC, this 2nd day of March 2009.

John M. McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. E9–4915 Filed 3–9–09; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0100]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 12, 2009, to February 25, 2009. The last biweekly notice was published on February 24, 2009 (74 FR 8281).

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, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. 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.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) 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 electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

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).

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, the 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, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

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/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: January 15, 2009.

Description of amendment request: The amendments would modify Technical Specifications (TSs) 3.3.10, 3.6.7, and 5.6.6 to delete the requirements related to hydrogen recombiners and hydrogen monitors. The proposed TS changes would support implementation of the revisions to 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003. The proposed changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of opportunity for public comments on TSTF–447, Revision 1, published in the **Federal Register** on August 2, 2002 (67 FR 50374), soliciting comments on a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination for the elimination of requirements for hydrogen recombiners, and hydrogen and oxygen monitors from TS. Based on its evaluation of the public comments received, the NRC staff made appropriate changes to the models and included final versions in a notice of availability published in the **Federal Register** on September 25, 2003 (68 FR 55416), regarding the adoption of TSTF–447, Revision 1, as part of the NRC's consolidated line item improvement process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1 is intended for key variables that most directly indicate the accomplishment of

a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the [Three Mile Island], Unit 2 accident, can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the analysis adopted by the licensee 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 request for amendments involves NSHC.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: September 29, 2008.

Description of amendment request: The proposed changes would revise the TMI–1 technical specifications (TSs) to reflect design changes resulting from the planned control rod drive control system (CRDCS) digital upgrade project. In addition, the proposed amendment would revise the TS to remove all references to the axial power shaping rods (APSRs) to reflect changes resulting from their proposed elimination from the TMI–1 reactor.

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, with U.S. Nuclear Regulatory Commission (NRC) staff edits in brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment modifies the Technical Specifications (TSs) to incorporate new TS requirements associated with the new Digital Control Rod Drive Control System (DCRDCS) and an evaluation to permanently remove the Axial Power Shaping Rods (APSRs) from the reactor core.

The proposed license amendment will continue to ensure reliability and operability of the control rod drive Reactor Trip Breakers (RTBs) to perform their safety function of tripping the reactor. The existing channel independence, separation and performance requirements of the RTBs and the Reactor Protection System (RPS) response time are retained for the new configuration. The RTB design was reviewed for credible common mode failures and no credible common mode failures were identified that would prevent the breakers from performing the reactor trip function. Reliable RTBs and their associated support circuitry provide assurance that a reactor trip will occur when initiated. The planned DCRDCS modification upgrades the relay-based Control Rod Drive Control System (CRDCS) to a solid state programmable DCRDCS using single rod power supplies assigned to each of the 61 Control Rod Drives (CRDs). The new components will meet the same design requirements (i.e., seismic, environmental, quality, separation, single failure criteria) as the existing components in the CRDCS/RPS interface. The DCRDCS modification will improve the reliability of the system by resolving age-related degradation issues and replacing obsolete equipment.

Malfunction of the CRD control system (or operator error) is an initiator of the startup and rod withdrawal accidents. The new DCRDCS meets the design requirements of the original system including redundancy of critical functions, isolation from safety related systems, reactivity rate limit, and single failure requirements. Electrical ratings, heat loading, structural and environmental aspects have been verified to be acceptable. Therefore, there is no increase in the frequency of occurrence or probability of a malfunction of equipment important to safety. The DCRDCS is not required for accident mitigation, post accident response

or offsite release mitigation. The action of the RPS to trip the RTBs, to remove power from the control rods, and drop the rods into the core, remains independent of the DCRDCS. Therefore, there is no increase in the consequences or probability of occurrence of an accident previously evaluated.

The modified Diverse Scram System (DSS) design utilizes the same power sources as the existing DSS, which are independent of reactor trip (i.e., RPS) related power sources. There is no change to the DSS logic circuitry. The DSS sensors and trip setpoint remains unchanged. Updated Final Safety Analysis (UFSAR) Section 7.1.5.4 indicates that: ''The DSS provides an independent method of automatically tripping the reactor in the event the RPS related reactor trip system fails. It is designed in accordance with the Anticipated Transient Without Scram (ATWS) rule and, as such, its critical features are independence and diversity from the reactor trip system and emphasis on not failing in a tripped state.'' However, DSS is not safety related and is not credited in any safety analysis in UFSAR Chapter 14, ''Safety Analysis.'' The assumed DSS response time increase from 1.0 second to 2.0 seconds has been evaluated and the results of the analysis concluded that the original acceptance criteria are maintained. Therefore, the proposed change to the DSS [is not adverse and] does not increase the consequence of an ATWS event.

The proposed license amendment will continue to ensure the reliability and operation of the reactor core. Analyses have shown that the core designs employed at TMI–1 are stable with respect to axial oscillations and that xenon oscillations initiated during power transients are naturally damped or can be manually suppressed using regulating control rods (i.e., Control Rod Group 7 (CRG–7)). Actual operating experience at TMI–1 bears out the analysis conclusions that adequate axial imbalance control can be maintained using coordinated movements of CRG–7 [and] timed water additions. A review of the TMI–1 safety analyses found no mention or credit for APSRs in any of the events analyzed for TMI–1, and safety analysis assumptions are verified to bound key core parameters for each reload with explicit accounting for the presence of (or lack of) APSRs in the core. Therefore, there is no affect of APSRs on transient analyses, as APSR positions do not change in the event of a reactor trip.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. Rather, the CRDCS/RPS interface (i.e., RTBs) is used to mitigate the consequences of an accident that has already occurred. The proposed TS changes do not affect the mitigating function of this system. The failure of any one RTB will not inhibit the reactor trip function. The modification interfaces with the DSS, which mitigates the ATWS event, but the interface function remains the same.

A Failure Modes and Effects Analysis (FMEA) was performed on the DCRDCS design to determine if adverse effects (i.e., loss of reactor control, uncontrolled rod withdrawal, reactor trip, or prevention of reactor trip) could result from the credible failure of a single component. The FMEA concluded that no credible single component failure would cause a total loss of reactor control, an uncontrolled rod withdrawal, a reactor trip, or prevent a reactor trip. All operation critical to the safe and effective performance of the DCRDCS maintained sufficient redundancy such that no credible single failure could compromise the design functionality.

The APSRs' original function was to control any reactor core tendency towards axial oscillations resulting from xenon instabilities that could occur for certain early reactor core designs (*i.e.*, rodded core designs). More recent non-rodded feed-and-bleed core designs have been shown to be self-dampened with respect to axial xenon oscillations such that APSRs have not been moved at TMI–1 for axial power control since 1994, and have been withdrawn from the reactor core since Fall 2005 with Core Operating Limits Report limits preventing insertion, consistent with AREVA reload methods.

Use of [CRG–7] has been shown to adequately suppress axial xenon oscillations.

The proposed changes to the CRDCS and APSRs and associated TS changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes do not adversely impact any plant safety limits, setpoints, response times, or design parameters. The changes do not negatively affect the fuel, fuel cladding, reactor coolant system, or containment integrity [under normal, transient or accident conditions].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, (TMI–1) Dauphin County, Pennsylvania

Date of amendment request: November 6, 2008.

Description of amendment request: The proposed amendment would modify the TMI–1 Technical Specifications (TS), to replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on dose equivalent Xenon-133 (DEX) and would take into account only the noble gas activity in the primary coolant. The completion time for DEX being out of specification would be increased to match the action time requirements for the dose equivalent Iodine-131 (DEI) specification. In addition, the current DEI definition would be revised to allow the use of additional options for determining thyroid dose conversion factors. This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–490. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 20, 2006 (71 FR 67170), on possible amendments concerning TSTF–490, including a model safety evaluation and model no significant hazards (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 15, 2007 (72 FR 12217). The licensee affirmed the applicability of the following NSHC determination in its application dated November 6, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the

consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change revises the limits on noble gas radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses. Based upon the reasoning presented above, the requested change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: October 9, 2008.

Description of amendment request: The proposed changes would revise the existing Three Mile Island (TMI), Unit 1, technical specifications (TSs) relating to the steam generator (SG) tube surveillance program. The proposed changes reflect the planned installation of replacement SGs and specifically address the new thermally treated Alloy 690 tubing design of the replacement SGs. Removal of sections of the TSs that are not applicable to the replacement SGs are proposed.

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, with U.S. Nuclear Regulatory Commission (NRC) staff edits in brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Technical Specifications (TSs) for the TMI, Unit 1 Steam Generator (SG) Program recognize that the TMI, Unit 1 SGs are being replaced and the standard industry performance criteria documented in [Technical Specification Task Force (TSTF) Traveler,] TSTF–449[,] for Alloy 690-tubed SGs will apply. These changes eliminate criteria that were established to reflect the condition and materials of the current TMI, Unit 1 SGs, and add the requirements for inspection of Alloy 690-tubed SGs from TSTF–449.

With these proposed TS changes, the operational primary-to-secondary leakage rate limit established for the original TMI, Unit 1 SGs is replaced with the standard industry primary-to-secondary leakage rate limit. The standard industry limit is that limit provided in TSTF–449. The current, reduced limit in the TMI, Unit 1 TS was implemented in response to upper tubesheet tube expansion degradation, and repairs, in the original TMI, Unit 1 SGs. A reduced limit is not required for the replacement SGs since they are fabricated from advanced materials and [will not be] subjected to the degradation mechanisms that influenced the original TMI, Unit 1 SGs. Thus, reverting to the standard industry limit is appropriate. The slightly higher, industry standard, leak rate limit is still low enough to provide assurance that the probability of tube ruptures, or of rapidly propagating tube leaks, remains acceptably low. Thus, the probability of a previously evaluated accident is not increased.

The installation of the new SGs, with improved materials, will decrease the consequences of SG related accidents. The removal of accident-induced leakage attributable to the current degradation mechanisms from TS 6.19.c.1.b [provides a reduction in the] accident induced leakage limit to 1 gpm per SG. SG accident-induced leakage is proportional to dose; a lower accident-induced leakage limit will result in a lower dose than previously evaluated accident consequences.

The proposed change to replace the 90-day report with a report required within 180 days is a change to an administrative requirement and does not affect the probability or consequences of an accident. The 180-day period is now industry ''standard'' practice per TSTF–449.

These changes continue to provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). With the proposed changes, the SG performance criteria (based on tube structural integrity, accident-induced leakage, and operational leakage) and SG Program are updated to reflect the replacement SGs while remaining consistent with TSTF–449.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident that was previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes recognize an improvement in SG design as a result of SG replacement. The replacement SGs contain a number of design improvements with respect to the plant's original SGs. However, even with the design improvements, the replacement SGs are very similar to the original SGs and new types of accidents are not created. There are no new design functions for the Alloy 690 tubing in the replacement SGs. The proposed new leakage and inspection requirements are the standard industry requirements for Alloy 690 tubing.

Primary-to-secondary leakage monitoring equipment is not affected by the proposed changes, and primary-to-secondary leakage will continue to be monitored to ensure it remains within current accident analysis assumptions and limits. The proposed changes implement the industry ''standard'' TSTF–449 primary-to-secondary leak limits for the plant's Alloy 690-tubed replacement SGs. No new types of primary-to-secondary leak accidents are created.

The proposed change to replace the 90-day report with a report required within 180 days is a change to an administrative requirement and does not create a new or different kind of accident. The 180-day period is now industry ''standard'' practice per TSTF–449.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors [PWRS] are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. The SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

SG tube integrity is a function of the design, environment, and physical condition of the tubing. The proposed changes do not affect the operating environment but do recognize the improved tube material as a result of replacing the SGs. The proposed TS changes for inspection, repair, and leakage requirements are consistent with industry codes and standards for replacement SGs with Alloy 690 tubing material. The requirements established by the SG Program are consistent with those in the applicable design codes and standards. The proposed changes update the requirements in the current TSs to reflect SG replacement.

The proposed TS changes include a change to the current TS limit on primary-to-

secondary leakage of 144 GPD [gallons per day] that was established in the 1980s due to SG tube degradation. The basis for this limit will no longer be applicable with the installation of replacement SGs. The proposed limit of 150 gallons per day of primary-to-secondary leakage through any one SG is ''standard'' for the U.S. PWR industry. This limit is based on operating experience with SG tube degradation mechanisms that result in leakage and provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. Further, if it is not practical to assign the leakage to an individual SG, all the primary-to-secondary leakage is conservatively assumed to be from one SG. This operational leakage rate criterion, in conjunction with the implementation of the SG Program, is an effective measure for minimizing the frequency of SG tube ruptures. [Additionally, this TS requirement is significantly less than the conditions assumed in the safety analysis.]

The proposed change to replace the 90-day report with a report required within 180 days is a change to an administrative requirement and does not affect the margin of safety. The 180-day period is now industry ''standard'' practice per TSTF–449.

For the above reasons, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 4, 2008.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.9.3, ''Containment Penetrations,'' to permit refueling operations with both personnel airlock doors open under administrative control. Nuclear Regulatory Commission (NRC) review and approval of a revised non loss-of-coolant accident (LOCA) gas gap fractions and fuel-handling accident (FHA) using the revised gap fractions and a shorter decay time of 72 hours will be necessary to support this license amendment.

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. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are three separate items requiring NRC approval in the licensee's application. The licensee has submitted a plant-specific analysis to revise the non-LOCA gas gap fractions. Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' includes Table 3, ''Non-LOCA Fraction of Fission Product Inventory in Gap.'' The Ginna licensee has determined that a small number of fuel rods may exceed the peak power and burnup criteria of Table 3 thus necessitating the plant-specific analysis. The new non-LOCA gap fractions are considered a methodology change thus requiring NRC review and approval.

The Ginna FHA currently assumes that fuel movement will not occur prior to 100 hours following reactor shutdown. The licensee has submitted a revised FHA that assumes both the new gas gap fractions discussed above and only 72 hours of decay time prior to fuel movement. The revised FHA must also be reviewed and approved by NRC.

The proposed change to TS 3.9.3, which would permit refueling operations with both personnel airlock doors open under administrative control, impacts the release pathway for the FHA. The proposed TS change requires NRC review and approval.

The proposed changes to the gas gap fractions and the FHA represent analytical changes and do not increase the probability of an accident previously evaluated. The change to TS 3.9.3 introduces a new release pathway for the FHA and does not increase the probability of an FHA or any other accident previously evaluated.

The change in analyzed decay time and the non-LOCA gap fractions result in an increase in the estimated dose to the control room and off-site receptors and, upon approval, will become the analyses of record. However, the increase in dose is within regulatory limits so that the changes do not represent a significant increase in the consequences of the FHA or any other accident previously evaluated. The proposed change to TS 3.9.3 introduces a new release pathway for the FHA. However, control room and offsite dose calculations are bounded by the release pathway from the equipment hatch. As a result, the proposed change to TS 3.9.3 does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the probability or consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes in analyzed decay time and the non-LOCA gap fractions only impact design inputs to the FHA. The proposed change to TS 3.9.3 only impacts isolation requirements during refueling operations within the containment. The only accident which could result in a significant release of radioactivity in the plant mode where refueling is possible is the FHA. No other initiators or accident precursors are created by this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident not previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change in analyzed decay time and the non-LOCA gap fractions result in an increase in estimated dose to the control room and off site receptors. However, the dose remains within regulatory guidelines and limits with adequate margin. The proposed change to TS 3.9.3 introduces a new release pathway for the FHA which is bounded by the release pathway through the equipment hatch.

Therefore, the proposed change does not involve a significant reduction in the margin of safety. Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Group, LLC, 750 East Pratt Street, 17th Floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following

amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 13, 2007, as supplemented by letter dated February 18, 2009.

Description of amendment request: The amendment deletes Technical Specification (TS) Section 6.5 and its associated subsections relating to the Review and Audit function, as well as correcting several administrative items. Additionally, the amendment implements changes to correct minor errors in TS Tables 3.1.1, 4.1.1, and 4.1.2.

Date of issuance: February 24, 2009.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 273.

Facility Operating License No. DPR–16: The amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 8, 2008 (73 FR 19108). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2009.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: November 13, 2007, supplemented by letters dated September 29, 2008, and February 18, 2009.

Brief description of amendment: The amendment deletes Technical Specification (TS) Section 6.5 and its associated subsections relating to the Review and Audit function, as well as correcting several administrative items. The administrative items involve: correcting typographical errors, providing improved TS figure legibility, updating the description of the installed spent fuel pool storage locations, removing references to deleted TS sections, and correcting an error in the labeling of outfalls on the TMI site drawing.

Date of issuance: February 24, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 269.

Facility Operating License No. DPR–50. Amendment revised the license and the technical specifications.

Date of initial notice in ***Federal Register****:* April 8, 2008 (73 FR 19109). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2009.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendments: January 20, 2009.

Brief description of amendments: The amendment revised Technical Specification Surveillance Requirement (SR) 3.3.1.4 frequency. SR 3.3.1.4 is a Trip Actuating Device Operational Test of the reactor trip breakers and reactor trip bypass breakers.

Date of issuance: February 13, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 242.

Facility Operating License No. NPF–52: The amendment revised the license and the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination by February 28, 2009. No comments have been received to date. However, the notice also provided an opportunity to request a hearing by March 30, 2009, but indicated that if the Commission make a final NSHC determination, any such hearing would take place after issuance of the amendment.

Date of initial notice in ***Federal Register****:* January 28, 2009 (74 FR 4986). The supplement dated February 5, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 25, 2008.

Brief description of amendment: The amendment would revise Appendix A of Technical Specifications (TSs), as they apply to the spent fuel pool storage requirements in TS Section 3.7.16 and the criticality requirements for the Region I spent fuel pool and north tilt pit fuel storage racks, in TS Section 4.3.1.1.

Date of issuance: February 6, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 236.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 2, 2009 (74 FR 123).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 21, 2008.

Brief description of amendment: The amendment supports a proposed change to the in-service inspection program that is based on topical report WCAP–16168–NP–A, Revision 2, ''Risk-Informed Extension of the Reactor Vessel In-Service Inspection Interval.'' In the referenced safety evaluation of the topical report, the NRC required licensees to amend their licenses to require that the information and analyses requested in Section (e) of the final 10 CFR 50.61a (or the proposed 10 CFR 50.61a, given in 72 FR 56275 prior to issuance of the final 10 CFR 50.61a) be submitted for NRC staff review and approval within one year of completing the required reactor vessel weld inspection. Entergy Nuclear Operations, Inc., added a new license condition to provide this information.

Date of issuance: February 11, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 237.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 4, 2008 (73 FR 65690). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 1, 2007, as supplemented by letters dated September 5 and September 21, 2007, February 14, 2008, and January 19 and February 20, 2009.

Brief description of amendment: The changes revised the allowable values in the Grand Gulf Nuclear Station, Unit 1, Technical Specification Tables 3.3.5.1–1 and 3.3.5.2–1 for the Condensate Storage Tank (CST) low level setpoints for the High Pressure Core Spray and Reactor Core Isolation Cooling suction swap from the CST to the Suppression Pool.

Date of issuance: February 25, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 181.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* May 8, 2007 (72 FR 26176). The supplements dated September 5 and September 21, 2007, February 14, 2008, and January 19 and February 20, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: August 16, 2007, as supplemented by letter dated January 8, 2009.

Brief description of amendment: The amendment added a new license condition on the control room envelope (CRE) habitability program; revised the TS requirements related to the CRE habitability in TS 3.7.6, ''Control Room Emergency Air Filtration System—Operating,'' TS 3.7.6.2, ''Control Room Emergency Air Filtration System—Shutdown,'' and TS 3.7.6.5, ''Control Room Isolation and Pressurization''; and established a CRE habitability program in TS Section 6.5, ''Administrative Controls—Programs.'' These changes are consistent with the NRC-approved Industry/TS Task Force (TSTF) Traveler TSTF–448, Revision 3, ''Control Room Habitability.'' The availability of this TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the Consolidated Line Item Improvement Process.

Date of issuance: February 20, 2009.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment No.: 218.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* September 25, 2007 (72 FR 54473).

The supplemental letter dated January 8, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Exelon Generation Company, LLC, Docket No. 50–352 and No. 50–353, Limerick Generating Station, Unit 1 and 2, Montgomery County, Pennsylvania.

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station,Units 2 and 3,York and Lancaster Counties, Pennsylvania.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania.

Date of application for amendments: February 28, 2008.

Brief description of amendments: The amendment incorporates Technical Specification Task Force Change

Traveler No. 308, Rev. 1, ''Determination of Cumulative and Projected Dose Contributions in the Radioactive Effluent Controls Program (RECP),'' which clarified the existing wording in the RECP technical specification to reflect the intent of Generic Letter 89–01, ''Implementation of Programmatic and Procedural Controls for radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of the Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program,'' regarding the periodicity of dose projections for the calendar quarter and year.

Date of issuance: February 23, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 156, 156, 161, 161, 184, 43, 230, 223, 190, 177, 197, 158, 272, 270, 274, 242, 237 and 268.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–2, DPR–19, DPR–25, NPF–11, NPF–18, NPF–39, NPF–85, DPR–16, DPR–44, DPR–56, DPR–29, DPR–30, and DPR–50: The amendments revised the Technical Specifications/Licenses.

Date of initial notice in ***Federal Register****:* May 20, 2008 (73 FR 29162). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2009.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 8, 2008.

Description of amendment request: This amendment changes the Technical Specifications to delete Surveillance Requirement 4.6.3.1, which specifies post-maintenance testing requirements for containment isolation valves.

Date of issuance: February 23, 2009.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 120.

Facility Operating License No. NPF–86: The amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* August 26, 2008 (73 FR 50361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 2009.

No significant hazards consideration comments received: No comments were received. However, a hearing was requested which included contentions challenging the NRC staff's proposed no significant hazards consideration determination. On October 14, 2008, the request for hearing was denied by the Atomic Safety and Licensing Board. In accordance with 10 CFR 50.91(a)(3), the NRC staff made a final determination of no significant hazards consideration which is included in the Safety Evaluation.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York

Date of application for amendment: February 25, 2008.

Brief description of amendments: The amendment revises NMP1 Technical Specification (TS) Section 3/4.4.4, ''Emergency Ventilation System,'' to remove the operability and surveillance requirements for the 10,000 watt heater located in the common supply inlet air duct for the Reactor Building Emergency Ventilation System. The amendment also revises TS 3/4.4.5, ''Control Room Air Treatment System,'' to reduce the 10-hour duration monthly system operational surveillance test requirement to a 15-minute run surveillance test requirement.

Date of issuance: February 17, 2009.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 201.

Renewed Facility Operating License No. DPR–063: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register****:* April 8, 2008 (73 FR 19110). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 2009.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), Oswego County, New York

Date of application for amendment: August 14, 2008.

Brief description of amendment: The amendment revises the NMP1 Technical Specification (TS) Surveillance Requirement frequency in TS 3.1.3, ''Control Rod Operability,'' and Example 1.4–3 in TS Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 test interval extension. The proposed changes are consistent with the Nuclear Regulatory Commission (NRC)-approved Revision 1 to TS Task Force (TSTF) Change Traveler, TSTF–475, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action,'' and NUREG–1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' Revision 3.0. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on November 13, 2007 (72 FR 63935).

Date of issuance: February 23, 2009.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 130.

Renewed Facility Operating License No. NPF–69: Amendment revises the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* October 21, 2008 (73 FR 62567). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 2009.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 8, 2008, as supplemented by letter dated April 25, 2008, and email dated January 7, 2009.

Brief description of amendment: The amendment revises Technical Specification 5.6.6, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR),'' to include a new methodology for establishing reactor pressure vessel pressure-temperature limits in the Ginna PTLR. The new PTLR methodology is documented in WCAP–14040–A, Revision 4, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves.''

Date of issuance: February 23, 2009.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 106.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 8, 2008 (73 FR 19111). The supplemental letter dated April 25, 2008, and email dated January 7, 2009, provided additional information that clarified the application, did not expand the scope of the Application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated February 23, 2009.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: October 8, 2008.

Brief description of amendment request: The amendments revise the TS for the diesel fuel oil testing program. The proposed changes are based on NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–374, revision 0. Prior notice of such a proposed change using the Consolidated Line Item Improvement Process was provided in the **Federal Register** on April 21, 2006 (71 FR 20735).

Date of issuance: February 20, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 181 and 174.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register****:* December 16, 2008 (73 FR 76413) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2009.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 1, 2008.

Brief description of amendment: On October 31, 2008, the NRC approved Amendment No. 186 to allow a one-time extension to the Completion Times for both essential service water (ESW) trains and the emergency diesel generators from 72 hours to 14 days. Amendment No. 186 was effective on the date of issuance and approved implementation by December 31, 2008, to permit replacement of ESW piping. The licensee completed the replacement of ESW Train A piping, but deferred the replacement of ESW Train B piping to early 2009. Amendment No. 191 authorized implementation of the ESW Train B piping prior to April 30, 2009.

Date of issuance: February 24, 2009.

Effective date: As of its date of issuance, and shall be implemented prior to April 30, 2009.

Amendment No.: 191.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* December 23, 2008 (73 FR 78858).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 26th day of February 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–4898 Filed 3–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 9, 16, 23, 30, April 6, 13, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of March 9, 2009—Tentative

There are no meetings scheduled for the week of March 9, 2009.

Week of March 16, 2009—Tentative

Monday, March 16, 2009

9:30 a.m.

Briefing on State of Nuclear Materials and Waste Programs (Public Meeting) (*Contact:* Tammy Bloomer, 301–415–1725).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, March 17, 2009

1:30 p.m.

Briefing on State of Nuclear Reactor Safety Programs (Public Meeting) (*Contact:* Tammy Bloomer, 301–415–1725).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, March 20, 2009

9:30 a.m.

Briefing on the Nuclear Education Program (Public Meeting) (*Contact:* John Gutteridge, 301–492–2313).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 23, 2009—Tentative

There are no meetings scheduled for the week of March 23, 2009.

Week of March 30, 2009—Tentative

There are no meetings scheduled for the week of March 30, 2009.

Week of April 6, 2009—Tentative

There are no meetings scheduled for the week of April 6, 2009.

Week of April 13, 2009—Tentative

Wednesday, April 15, 2009

9:30 a.m.

Briefing on NRC Corporate Support (Public Meeting) (*Contact:* Karen Olive, 301–415–2276).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 16, 2009

1:30 p.m.

Briefing on Human Capital and EEO (Public Meeting) (*Contact:* Kristin Davis, 301–492–2266).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: March 5, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–5224 Filed 3–6–09; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Republication of Systems of Records Notices

Correction

In notice document E8–31458 beginning on page 574 in the issue of January 6, 2009, make the following corrections:

1. On page 607, column 2, following the first section **RECORD SOURCE CATEGORIES:**, missing text for NRC–43 is added to read as follows:

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

2. On page 607, column 2, remove language beginning with the second section **RECORD ACCESS PROCEDURE:** through section **EXEMPTIONS CLAIMED FOR THE SYSTEM:**.

3. NRC–44 is reprinted in its entirety:

NRC-44

SYSTEM NAME:

Employee Fitness Center Records--NRC.

SYSTEM LOCATION:

Primary system--Fitness Center, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system--Regional offices, listed in Addendum I, Part 2, only maintain lists of their employees who receive subsidy from NRC for off-site fitness center memberships.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership at the Fitness Center, including current and former members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes applications to participate in NRC's Fitness Center, information on an individual's degree of physical fitness and their fitness activities and goals; and various forms, memoranda, and correspondence related to Fitness Center membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, Social Security number, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act 15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and computer media.

RETRIEVABILITY:

Information is indexed and accessed by an individual's name and/or Social Security number.

SAFEGUARDS:

Records are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC Fitness Center where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG-0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance and Wellness Services, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR Part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. Z8–31458 Filed 3–9–09; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

In the Matter of International Business Ventures Group, Inc.; File No. 500–1; Order of Suspension of Trading

March 6, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Business Ventures Group, Inc. (''IBVG'') because of questions regarding the accuracy of assertions by IBVG, and by others, of publicly disseminated information concerning, among other things, IBVG's products and business prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities in the above listed company is suspended for the period from 9:30 a.m. EST, March 6, 2009 through 11:59 p.m. EDT, on March 19, 2009.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E9–5169 Filed 3–6–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59484; File No. SR–FINRA–2009–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to a New Limited Representative Registration Category for Investment Banking Professionals

March 2, 2009.

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 February 17, 2009, 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''), and amended on February 27, 2009,[3] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to establish NASD Rule 1032(i), a new limited representative registration category for investment banking professionals. The proposed rule change also sets forth the registration requirements for principals who supervise investment banking activities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, 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

Section 15A(g)(3) of the Act[4] requires FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge.

NASD Rule 1031 requires that each person associated with a member who functions as a representative must be registered in a category appropriate to the function that person performs. The rule defines a ''representative'' as, among others, a person associated with a member who is ''engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who [is] engaged in the training of persons associated with a member for any of these functions.'' Pursuant to NASD Rule 1032, a person who functions as a registered representative must pass the General Securities Representative (Series 7) examination or certain equivalent examinations, unless such person's activities are so limited as to qualify him or her for a limited representative category for which a more dedicated examination is prescribed.

The proposed rule change would create a new limited representative category—Limited Representative—Investment Banking—for persons whose activities are limited to investment banking, including those who work on the equity and debt capital markets and syndicate desks. More specifically, the proposed registration category would encompass those associated persons whose activities primarily involve: (1) Advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (2) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion. The proposed registration category would not cover individuals whose investment banking work is limited to public (municipal) finance offerings or direct participation program offerings as defined in NASD Rule 1022(e)(2). The proposed registration category further would not cover individuals whose investment banking work is limited to effecting private securities offerings as defined in NASD Rule 1032(h)(1)(A).

FINRA is in the process of developing an accompanying qualification examination that will provide a more targeted assessment of the job functions performed by the individuals that would fall within the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to SR–FINRA–2009–006 replaced and superseded the original rule filing.

[4] 15 U.S.C. 78*o*–3(g)(3).

registration category.[5] The exam would be taken in lieu of the Series 7 exam (or equivalent exams) by the individuals who perform solely those job functions. Any person whose activities go beyond those proposed for the Limited Representative-Investment Banking registration category would be required to separately qualify and register in the appropriate category or categories of registration attendant to such activities.

Those who already hold the Series 7 registration, as well as those who have passed the United Kingdom (Series 17) or Canada (Series 37/38) Modules of the Series 7 examination or hold a Limited Representative-Corporate Securities (Series 62) registration, would be ''grandfathered'' and not required to take the new qualification exam. Such individuals would be provided a period of six months during which they may ''opt in'' to the Limited Representative-Investment Banking registration, provided that at the time the proposed rule change is implemented, such individuals are engaged in investment banking activities covered by the proposed rule change.[6] Those individuals who choose to opt in would still retain their Series 7 registered representative registration in addition to the investment banking registration. After the six-month opt-in period, any individual holding a Series 7 registration that wishes to engage in the specified investment banking activities would be required to pass the Limited Representative-Investment Banking exam.

To ease the transition and to allow firms time to create qualification examination preparation programs, FINRA would permit new Limited Representative-Investment Banking candidates who are in the process of qualifying in the new registration category when the rule becomes effective to take either the Series 7 or Limited Representative-Investment Banking exam. This accommodation would remain in effect for six months after the implementation date of the proposed rule change.

FINRA understands that some member firms have created training programs in which certain new employees are exposed to the firm's various business lines by rotating among departments, including investment banking, where the employee's activities might fall within the proposed definition of a Limited Representative-Investment Banking. Depending on the activities performed by the employee during the training program, the firm may or may not require the employee to pass the Series 7 examination and become a registered representative. In recognition of such training programs, the proposed rule change would not require an employee placed in such programs to register as a Limited Representative-Investment Banking for a period of up to six months from the time the employee first engages in activities that otherwise would trigger registration as a Limited Representative-Investment Banking. This exception would be available for up to two years after the employee commences the training program. Firms that wish to avail themselves of this exception would be required to maintain documents evidencing the details of the training program and identifying the program participants who engage in activities that otherwise would require registration as a Limited Representative-Investment Banking and the date on which such participants commenced such activities.

Individuals who wish to act as a general principal for activities set forth in the proposed rule change would be required to obtain the proposed Limited Representative-Investment Banking registration—either by opting in or passing the exam—and also pass the General Securities Principal exam. Such individuals would be limited to acting as a general principal for the investment banking activities covered by the proposed rule change. Individuals who wish to function in the capacity of general principal for broader securities-related activities would be required to take another appropriate qualification examination, such as the Series 7 or Series 62, in addition to the General Securities Principal exam. Those individuals currently functioning as a general principal supervising investment banking activities as described in the proposed rule change would be granted the same six-month grace period during which they could opt in to the Limited Representative-Investment Banking registration.

FINRA believes the creation of a proposed Limited Representative-Investment Banking registration and accompanying exam would provide for a more targeted assessment of the competency of investment banking personnel to perform their unique job functions and, as a result, translate into better quality service for investors. FINRA further believes that the proposed requirement for principals who supervise investment banking activities to register and qualify as a Limited Representative-Investment Banking will enhance investor protection and member compliance with applicable FINRA rules and the federal securities laws. Finally, FINRA believes that the proposed rule change would enable members to allocate their training resources more efficiently.

The implementation date will be 90 days after the effectiveness of a future proposed rule change to establish the corresponding qualification examination.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6),[7] 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 and Section 15A(g)(3) of the Act,[8] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

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

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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[5] The examination itself, including the content outline and test specifications, and fees associated with it will be the subject of separate proposed rule changes after Commission approval of this proposed rule change to establish the new registration category.

[6] No associated persons of a member will be eligible for the opt in unless the member's current Form BD indicates that the member engages in investment banking activities.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(g)(3).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–FINRA 2009–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2009–006. 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 changes 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 No. SR–FINRA–2009–006 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4961 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59490; File No. SR–FINRA–2009–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Incorporated NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures) and To Delete Incorporated NYSE Rule 177 (Delivery Time—''Cash'' Contracts) Relating to the Elimination of NYSE Members' Ability To Enter Orders on the NYSE With Settlement Instructions of ''Cash,'' ''Next Day'' and ''Seller's Option''

March 3, 2009.

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 February 20, 2009, 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 and II below, which Items have been 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 is proposing to amend Incorporated NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures), and to delete Incorporated NYSE Rule 177 (Delivery Time—''Cash'' Contracts)[4] to conform to the proposed rule change by the New York Stock Exchange, LLC (''NYSE'') to its versions of Rules 12, 177 and 282.[5]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, 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

FINRA is proposing changes to Incorporated NYSE Rules 12,[6] 177[7] and 282[8] to conform these rules to recent amendments made by NYSE. The NYSE's amendments remove references to certain settlement instructions that are no longer compatible with the NYSE's electronic market. These include instructions to settle on ''cash,'' ''next day'' or ''seller's option'' basis.

As described by the NYSE in its filing,[9] in the NYSE's current environment, orders received by NYSE systems that are marketable upon entry are eligible to be immediately and automatically executed. According to the NYSE, order types and settlement instructions that require manual intervention pose significant

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[9] 17 CFR 200.30–3(a)(12).

[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 (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Rel. No. 59446 (February 25, 2009) (File No. SR–NYSE–2009–17).

[6] Incorporated NYSE Rule 12 defines the term ''business day.''

[7] Incorporated NYSE Rule 177 states the delivery time for ''cash'' contracts.

[8] Incorporated NYSE Rule 282 sets forth buy-in procedures.

[9] *See supra* note 3 [sic]. The Commission notes that the correct cross-reference is to note 5.

impediments to the efficient functioning of the NYSE's market. In addition, the NYSE states that the ability to have market participants' orders executed in the most efficient manner necessitates the elimination of cash, next day and seller's option as valid settlement instructions for orders submitted to the NYSE. It adds that because these instructions result in the orders printing to paper, the manual intervention required in the processing of these orders puts the orders at the very real risk of ''missing the market'' as a result of the current speed of order execution in the NYSE market. Under the NYSE filing, references to cash, next day and seller's option were deleted from NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures) as valid settlement instructions for orders submitted to the NYSE. In addition, the NYSE eliminated NYSE Rule 177 (Delivery Time—''Cash'' Contracts).[10]

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 12, 177 and 282 to ensure consistency with NYSE's versions of Rules 12, 177 and 282.[11]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] 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 that the proposed rule change is necessary and appropriate to reduce the risk of customers missing the market and possibly receiving inferior priced executions because of legacy NYSE settlement instructions and to maintain consistency with the NYSE's amendments to its Rules 12, 177 and 282.

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 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)[13] of the Act and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative on March 13, 2009, the same date that NYSE's amendments are implemented. The Commission believes that allowing the proposed rule change to become operative on March 13, 2009 is consistent with the protection of investors and the public interest. The Commission notes that FINRA is merely revising its rules to conform to a proposed rule change by the NYSE that will be operative on March 13, 2009,[17] which will allow FINRA's Incorporated NYSE Rules to maintain their status as Common Rules under the Agreement. Accordingly, the Commission designates the proposed rule change to be operative on March 13, 2009.[18]

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–FINRA–2009–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–007. 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

[10] *Id.*

[11] Pursuant to Rule 17d–2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement (''Agreement'') to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all those rules (''Common Rules'') for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR–NASD–2007–054).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii) In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] *See* Securities Exchange Act Release No. 59446 (Feb. 25, 2009) (File No. SR–NYSE–2009–17).

[18] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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–FINRA–2009–007 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4965 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59498; File No. SR–FICC–2009–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Modifying the Appendix of the GSD–CME Cross-Margining Agreement, Deletion of the GSD–TCC Cross-Margining Arrangement, and Technical Changes and Corrections

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 13, 2009, the Fixed Income Clearing Corporation (''FICC'') 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 primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was 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

The proposed rule change will amend the appendix of the cross-margining agreement between FICC and the Chicago Mercantile Exchange, Inc. (''CME'') (''FICC/CME Agreement''), and to make additional technical changes and corrections.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

FICC is proposing to amend its Divisions' rules as follows:

1. Revisions to Appendix A of the Cross-Margining Agreement With the Chicago Mercantile Exchange, Inc.

Through its Government Securities Division (''GSD''), FICC currently participates in a cross-margining arrangement with the CME. The FICC/CME Agreement, which governs the arrangement, contains an Appendix A, which requires the parties to list other cross-margining or loss sharing arrangements to which they are parties and the order in which they will be considered when the parties calculate their available resources under the FICC/CME Agreement. The FICC/CME Agreement further provides that the parties may amend Appendix A without prior approval of the other party by giving notice to the other party.[4]

FICC has notified CME that it has amended Appendix A of the Agreement to: (1) Remove references to the cross-margining agreement with The Clearing Corporation (''TCC'') as that agreement is no longer in effect, (2) remove a reference to a multilateral netting contract and limited cross-guaranty agreement with the now-defunct Emerging Markets Clearing Corporation, (3) change the priority of the multilateral cross-guaranty agreements that FICC participates, and (4) make reference to the upcoming portfolio margining between GSD and FICC's Mortgage-Backed Securities Division (''MBSD''). This rule change incorporates these changes into the FICC/CME Agreement, which is a part of the GSD's rules.

2. Correction to MBSD Rules

FICC is also correcting a reference in MBSD's rules to reflect actual practice. While MBSD's fee schedule accurately labels a ''fee'' for non-compliance with MBSD trade input requirements, its rules incorrectly label this a ''fine.'' The proposed rule change corrects the fine reference.

3. Clarifications to GSD's Schedule of Time Frames

FICC is updating its Schedule of Time Frames to correct the time during which FICC's comparison, netting, settlement, and margining output normally is made available to members and to make clear that the funds-only settlement process occurs through the Federal Reserve's National Settlement Service.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it will make certain rule corrections and address the cross-margining agreements and therefore will support the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because it effects a change in an existing service of a registered clearing agency that does

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] Recitals F and G of the FICC/CME Agreement.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. 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 No. SR–FICC–2009–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FICC–2009–01. 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/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, 450 Fifth Street, NW., 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 FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf.* 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 No. SR–FICC–2009–01 and should be submitted on or before March 31, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5057 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59492; File No. SR–ISE–2009–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, by International Securities Exchange, LLC Relating to Changes to the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC

March 3, 2009.

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 February 27, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On March 3, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make changes to the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (''Third Amended and Restated DE Operating Agreement'') to preserve the right of the DB US Financial Markets Holding Corporation, LabMorgan Corporation, Merrill Lynch L.P. Holdings, Inc., Nomura Securities International, Inc., and Sun Partners LLC (together, the ''ISE Stock Exchange Consortium Members''), who were formerly minority unitholders of the ISE Stock Exchange, LLC, as defined below, to retain the right to designate a Manager to Direct Edge Holdings Board of Managers[3] on an ongoing basis. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 2008, the ISE closed a transaction whereby, among other things, ISE Stock Exchange, LLC (''ISE Stock Exchange''), a Delaware limited liability company, merged with and into Maple Merger Sub, LLC (''Maple Merger Sub''), a Delaware limited liability company and a wholly owned subsidiary of Direct Edge Holdings LLC (''Direct Edge''), with Maple Merger Sub being the surviving entity.[4] As part of the same transaction, ISE Holdings purchased equity interests in Direct Edge such that subsequent to completing the transaction, ISE Holdings owns a 31.54% equity interest in Direct Edge. Following the closing of the transaction and the merger of ISE

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Section 7.1(a) of the Third Amended and Restated DE Operating Agreement, each Manager is designated as a ''manager'' of Direct Edge within the meaning of the Securities and [sic] Exchange Act of 1934 (the ''Exchange Act'').

[4] *See* Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008)(SR–ISE–2008–85)(Order approving a proposed rule change, as modified by amendment no. 1, relating to the purchase by International Securities Exchange Holdings, Inc. (''ISE Holdings'') of an ownership interest in Direct Edge).

Stock Exchange into Maple Merger Sub, Maple Merger Sub now owns and operates the marketplace for the trading of U.S. cash equities by Equity Electronic Access Members (''Equity EAMs'') of ISE under the rules of ISE, as a facility, as that term is defined in Section 3(a)(2) of the Exchange Act[5] of ISE (the ''Facility'' or ''ISE Stock'').[6]

ISE is a registered national securities exchange under Section 6 of the Exchange Act and a self-regulatory organization (''SRO''). As a facility of ISE, the Facility is subject to regulation by ISE and oversight by the Securities and Exchange Commission (''Commission'' or ''SEC'').

The Third Amended and Restated DE Operating Agreement contains provisions designed to ensure that any changes to the Third Amended and Restated DE Operating Agreement be first reviewed by ISE to determine whether such change must be filed with the SEC. For example, Section 15.2 of the Third Amended and Restated DE Operating Agreement provides that before any amendment to any provision of the Third Amended and Restated DE Operating Agreement shall be effective, such amendment shall be submitted to ISE and if ISE determines that such amendment must be filed with, or filed with and approved by, the SEC before the amendment may be effective under Section 19 of the Exchange Act and the rules promulgated under the Exchange Act or otherwise, then the proposed amendment to the Third Amended and Restated DE Operating Agreement shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

Direct Edge is now proposing to amend and restate the Third Amended and Restated DE Operating Agreement to preserve the right of the ISE Stock Exchange Consortium Members to retain the right to designate a manager to Direct Edge's Board of Managers so long as such ISE Stock Exchange Consortium Members own at least 5% in Direct Edge. Currently the ISE Stock Exchange Consortium Members have a collective ownership interest of 8.76% in Direct Edge. The ISE Stock Exchange Consortium Members have a right, pursuant to Section 7.1(a)(2) of the Third Amended and Restated DE Operating Agreement, to appoint a Manager provided that their Percentage Interest[7] does not fall below 7.5%. The ISE Stock Exchange Consortium Members expressed concern that their Percentage Interest could be diluted below the 7.5% threshold for appointing a Manager and that potential sales by ISE Stock Exchange Consortium Members to parties who are not ISE Stock Exchange Consortium Members could also have an unintended dilutive effect. Accordingly, Direct Edge is now proposing to amend and restate the Third Amended and Restated DE Operating Agreement to mitigate the potential for such dilutive events.

Specifically, Direct Edge is seeking to amend Section 7.2(a)(2) by: (i) Lowering the ownership threshold for appointing a Manager from 7.5% Percentage Interest to a 5% Percentage Interest; and (ii) providing a right of first refusal to the ISE Stock Exchange Consortium Members with respect to certain sales of other ISE Stock Exchange Consortium Members to parties who are not ISE Stock Exchange Consortium Members. Consistent with the requirements set forth in Section 15.2, the ISE has reviewed the proposed changes to the Third Amended and Restated DE Operating Agreement and has determined that such changes shall not be effective until filed with and approved by the SEC. Accordingly, ISE hereby submits the proposed changes and seeks Commission approval of such changes so that Direct Edge may execute the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (''Fourth Amended and Restated DE Operating Agreement'').

Additionally, Direct Edge proposes to make other non-substantive clean-up changes necessary to reflect that this agreement has been changed from the Third Amended and Restated DE Operating Agreement to the Fourth Amended and Restated Operating Agreement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,[8] in general, and with Sections 6(b)(1) and (b)(5) of the Exchange Act,[9] in particular, in that the proposal enables the Exchange and the Facility to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Exchange Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules.sro.shtml*); or

[5] 15 U.S.C. 78c(a)(2).

[6] Direct Edge is planning to file two Form 1 Applications to own and operate two national securities exchanges. If the Commission approves the Form 1 Applications, the Facility will cease operations.

[7] ''Percentage Interest'' means, with respect to a member, the ratio of the number of Units held by the member to the total of all of the issued and outstanding Units, expressed as a percentage.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(1), (5).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–08 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–08. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–08 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4962 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59485; File No. SR–Nasdaq–2009–016]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC To Eliminate the $3 Price Requirement for Continued Approval for an Underlying Security and Listing Additional Series of Options

March 2, 2009.

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 February 27, 2009, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes for NOM to modify Chapter IV, Section 4 (Securities Traded on NOM) of its options rules to eliminate the $3 market price per share requirement for continued approval for an underlying security. Nasdaq also proposes to modify Section 4 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3.

The text of the proposed rule change is available from Nasdaq's website at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 purpose of this proposed rule change is to eliminate the $3 market price per share requirement for continued approval for an underlying security from Chapter IV, Section 4 of NOM options rules. This proposed rule change also eliminates the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3.

NOM's rules require that the market price for a security be at least $3 on the previous trading day for the continued listing of options on that underlying security. If the price of an underlying security falls below $3, Nasdaq can continue to trade then-listed series on that underlying security, but is unable to list new series of options. Nasdaq believes that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below $3, Nasdaq is currently unable to list new series on underlying securities trading below $3. If there is market demand for series below $3, Nasdaq would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below $3.

Nasdaq believes that the $3 market price per share requirement is no longer necessary or appropriate, and therefore proposes that underlying securities meeting the remaining continued listing criteria set forth in Chapter IV, Section 4 will be eligible for continued listing and the listing of additional options series.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, remove impediments

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will permit Nasdaq to make options on underlying securities available even if the price of the underlying security is less than $3 thus providing investors additional opportunities to hedge their positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[10] and does not raise any new substantive issues. The Exchange believes that waiving the 30-day operative delay would advance similar rules for listing similar products on options exchanges and is essential for competitive purposes. For these reasons, the Commission believes that waiving the 30-day operative delay[11] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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–Nasdaq–2009–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Nasdaq–2009–016. 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–Nasdaq–2009–016 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4958 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission has determined to waive the five-day pre-filing period in this case.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] Nasdaq's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') recently approved by the Commission. *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (SR–CBOE–2008–127).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59479; File No. SR–NYSE–2009–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Adopting New NYSE Rule 6A and Amending Existing NYSE Rule 36 Concerning the Use of Personal Portable or Wireless Communication Devices and the Use or Possession of Wireless Trading Devices On and Off the Exchange Trading Floor

March 2, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 2, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new NYSE Rule 6A (''Trading Floor'') and amend existing NYSE Rule 36 (Communications Between Exchange and Members' Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to adopt new NYSE Rule 6A (''Trading Floor'') and amend existing NYSE Rule 36 (Communications Between Exchange and Members' Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

Background

As described more fully in a related rule filing,[4] the Exchange's parent company, NYSE Euronext, acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext U.S. LLC (''NYSE Alternext''), and continues to operate as a national securities exchange registered under Section 6 of the Act.[5] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on the NYSE Alternext legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the ''86 Trinity Trading Systems''), to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation'').[6] Similarly, effective March 2, 2009, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street (the ''Options Relocation'').[7]

Upon the Options Relocation, the NYSE Alternext Options Trading Floor and the Exchange's Trading Floor will be located in physically separate, adjacent rooms within the 11 Wall Street building. Access to the Trading Floors is restricted at each entrance by turnstiles and only authorized visitors, members or member firm employees are permitted to enter. Both Trading Floors will be managed and overseen by employees of the Exchange's and NYSE Alternext's corporate parent, NYSE Euronext.

Proposed Rule Changes

In order to accommodate the Options Relocation and the presence of the NYSE Alternext Options Trading Floor adjacent to the Exchange's Trading Floor, the Exchange proposes the following rule changes.

1. New NYSE Rule 6A (''Trading Floor'')

Under NYSE Rule 6, the term ''Floor'' is defined as ''the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.'' In addition, the Exchange has issued interpretive guidance that the ''Floor'' also includes the areas outside the ''Blue Line'' (member and member organization booths adjacent to the trading Floor) and ''any area reserved primarily for members, including the members' lounges and the members' bathrooms.'' [8]

The current definition of ''Floor'' under Rule 6 would, upon the Options Relocation, include the NYSE Alternext Options Trading Floor. This could lead to confusion under Exchange Rules when discussing the ''Floor'' and the ''Trading Floor''. The Exchange therefore proposes to adopt a new Rule 6A to define the term ''Trading Floor'' to make it clear that, within the area of the ''Floor'' of the Exchange as technically defined by Rule 6, there are distinct, restricted-access areas where trading is conducted by the Exchange on the one hand, and its corporate affiliate NYSE Alternext on the other. Under the new proposed Rule 6A, the term ''Trading Floor'' means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Garage.'' The Exchange's Trading Floor does not include the areas where NYSE Alternext-listed options are traded, commonly known as the ''Blue Room'' and the ''Extended Blue Room''. For the purposes of the Exchange's Rules, as well as this filing, these areas will be referred to as the ''NYSE Alternext Options Trading Floor''.

By adopting this new Rule, the Exchange seeks to prevent any confusion that may arise under Exchange Rules and to provide a more accurate description of the physical areas of the Floor where trading is actually conducted. In addition, as described below, this new Rule would also make it easier for the Exchange to define areas where certain conduct is or is not permitted by its members and member firm employees.

2. Use of Personal Portable or Wireless Communication Devices

NYSE Rule 36 currently prohibits, without prior Exchange approval, members and member organizations from establishing or maintaining any telephonic or electronic communication, including the usage of any portable or wireless communication devices (*i.e.* cellular phone, wireless pager, BlackBerry™, etc.), between the Floor and any other location. Under the Rule, Floor brokers and Registered Competitive Market Makers (''RCMMs'') may use Exchange authorized and issued portable phones on the Floor, subject to certain restrictions (*see* Rules 36.20–.22).[9] Designated Market Makers

[4] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR-Amex–2008–62) (approving the Merger).

[5] 15 U.S.C. 78f.

[6] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation).

[7] *See* Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR–NYSEALTR–2008–14) (notice of filing for Options Relocation), as amended.

[8] *See* NYSE Information Memo 08–66 (December 22, 2008).

[9] All members and member firm employees who use an authorized portable phone must execute a

(DMMs) may not use any portable or wireless communication devices on the Floor although they may, subject to restriction, maintain at their posts telephone lines and wired or wireless devices that are registered with the Exchange (*see* Rule 36.30). The use of all other portable or wireless communication devices on the Floor is prohibited.[10]

Although it would be prohibited under the current framework of Rule 36, to eliminate any potential confusion arising from the Options Relocation, the Exchange proposes to include a provision in Rule 36.23 that expressly prohibits members and member firm employees from using personal portable or wireless communications devices on the NYSE Alternext Options Trading Floor. However, those members and employees of member organizations that are also registered to trade options on NYSE Alternext will be permitted to use personal portable or wireless communications devices while on the NYSE Alternext Options Trading Floor in accordance with applicable NYSE Alternext Options rules and regulations.

The Exchange also proposes corresponding amendments to Rules 36.21 and.22 to provide that Floor brokers and RCMMs may not use an Exchange authorized and provided portable phone used to trade equities while on the NYSE Alternext Options Trading Floor, and including other technical changes.

3. Use or Possession of Wireless Trading Devices

Currently, Exchange members and member firm employees are permitted to use their Exchange approved handheld trading devices throughout the Trading Floor of the Exchange.[11] Subject to certain exceptions, pursuant to Rules 70 and 117 Floor brokers are required to either cancel or transfer to another Floor broker their agency interest files if they leave the Crowd (as defined under Rule 70.30), and, unless transferred, any open orders will not be represented while the Floor broker is away from the Crowd.[12]

Upon the Options Relocation, the NYSE Alternext Options Trading Floor will be adjacent to the NYSE Trading Floor. Thus, in order to address concerns regarding improper information sharing between the Exchange's Trading Floor and the NYSE Alternext Options Trading Floor, the Exchange proposes to adopt Rule 36.70 to prohibit Exchange members and member firm employees from (i) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's trading systems while on the NYSE Alternext Options Trading Floor, and (ii) using or possessing any wireless trading device that may be used to view or enter orders into the NYSE Alternext Options trading systems while on the Exchange's Trading Floor. These prohibitions would apply to any and all wireless trading devices, including devices issued by the Exchange or NYSE Alternext, as well as devices that are proprietary to a member, member organization or other entity.[13]

These proposed amendments would not change the current regulatory framework within which members and member firm employees may use their wireless trading devices. Members and member firm employees would still be limited to using Exchange approved wireless trading devices and would still be required to cancel or transfer their agency interest files in accordance with Rules 70 and 117 if they leave the Crowd/Trading Floor.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934[14] (the ''Act''), in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule changes also support the principles of Section 11A(a)(1)[15] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes will permit the Exchange and NYSE Alternext Options members and member firm employees to, within the existing regulatory framework at the Exchange, efficiently and effectively conduct business on their respective Trading Floors and engage in personal communications while off the Trading Floors consistent with maintaining necessary distinctions between the two self-regulatory organizations. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floors of the Exchange and its affiliate NYSE Alternext.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder[17] because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the

written acknowledgement as to the usage of the phone and authorizing the Exchange to receive data and records related to incoming and outgoing calls. *See* NYSE Information Memos 08–40 (August 14, 2008) *and* 08–41 (August 14, 2008) (concerning the use of Exchange authorized and issued portable phones on the Floor).

[10] Prior to the implementation of a pilot program in 2003, Rule 36 prohibited, *inter alia*, the use of portable or wireless communication devices on the Floor of the Exchange. In 2003, the Commission approved a six-month pilot program under NYSE Rule 36 for the use of portable phones by Floor brokers on the Floor of the Exchange, which was subsequently extended several times to June 30, 2008. *See* footnotes 5 through 7 in Securities Exchange Act Release No. 58068 (June 30, 2008), 73 FR 39363 (July 9, 2008) (SR–NYSE–2008–20). In 2006, the Exchange incorporated RCMMs into the pilot program. *See id.* footnotes 8 and 9. In July 2008 the Commission approved the Exchange's proposed amendments to Rule 36, making the pilot program permanent. *See id.* (order approving the amendments to Rule 36).

[11] The Exchange's Wireless Communications Plan governing the use of wireless handheld trading devices was previously approved by the Commission. *See* Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR–NYSE–1995–22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR–NYSE–1997–17).

[12] Rule 70.30 defines the ''Crowd'' as ''[t]he rooms on the Exchange Floor that contain active posts/panels where Floor brokers are able to conduct business[.]'' This is, essentially, the ''Trading Floor'' as defined in proposed Rule 6A.

[13] Proposed Rule 36.70 is based on proposed NYSE Alternext Options Rules 902(g) and (h). *See* Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR–NYSEALTR–2008–14), as amended. NYSE Alternext has proposed similar prohibitions for its Equities members. *See* SR–NYSEALTR 2009–21 (formally submitted March 2, 2009).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[18] The Exchange believes that this filing is non-controversial because it is consistent with the NYSE Alternext's filing implementing the Options Relocation,[19] as well as the Exchange's current regulatory controls governing the use of personal portable or wireless communications devices [20] and wireless trading devices,[21] which were approved by the Commission. Accordingly, the Exchange believes that these rule changes are eligible for immediately effective treatment under the Commission's Streamlining Order.[22]

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing so that the proposed rule changes may become effective upon filing and operative on the date of the Options Relocation, currently scheduled for March 2, 2009. The Commission hereby grants the Exchange's request.[23] The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange's proposal would clarify the Exchange's policies governing the use of personal portable or wireless communication devices as well as wireless trading devices. This clarification is necessitated by the Options Relocation.

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.

[18] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[19] *See* Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR–NYSEALTR–2008–14), as amended.

[20] *See* Securities Exchange Act Release No. 58068 (June 30, 2008), 73 FR 39363 (July 9, 2008) (SR–NYSE–2008–20).

[21] *See* Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR–NYSE–1995–22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR–NYSE–1997–17).

[22] *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 [sic] (July 11, 2008) (concerning 17 CFR 200 and 241).

[23] 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).

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–2009–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–23. 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–2009–23 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4959 Filed 3–9–09; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59483; File No. SR–NYSE–2009–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Equity Transaction Fees and Rebates

March 2, 2009.

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 February 27, 2009, the New York Stock Exchange LLC (''NYSE'' or ''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 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 make a number of changes to its schedule of equity transaction fees and rebates, with effect from March 1, 2009. 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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 make a number of changes to its schedule of equity transaction fees and rebates, with effect from March 1, 2009.

The following are the proposed changes:

- Currently, the Exchange does not charge any fees to customers adding liquidity to the order book. Customers who execute orders that add liquidity (both displayed and non-displayed) will now receive a rebate of $0.0010 per share. Transactions in stocks with a per share price less than $1.00 will not qualify for this rebate, but will continue to be free of charge.[3]
- Currently floor broker orders adding liquidity to the book receive a $0.0004 per share rebate. This rebate will increase from $0.0004 per share to $0.0012 per share.
- Currently the fee per share for customers (except for designated market makers (''DMMs'')) taking liquidity from the order book is $0.0008 per share (subject to a cap of $120 per transaction). This fee will increase from $0.0008 per share to $0.0018 per share. For trades in stocks with a per share price less than $1.00, the fee will equal the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0018 per share.
- The fee for market-at-close and limit-at-close orders (except for DMMs) is currently $0.0004 per share to both sides. This fee will increase from $0.0004 per share to $0.0005 per share (subject to a cap of $120 per transaction). For trades in stocks with a per share price less than $1.00, the fee will equal the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) $0.0005 per share.
- The fee for non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd is currently $0.0004 per share to both sides. These transactions will now be free of charge.
- Currently the Exchange charges a fee of $0.0004 per share in all odd lot transactions (including the odd lot portions of partial round lots). This fee will increase from $0.0004 per share to $0.0005 per share (subject to a cap of $120 per transaction). For trades in stocks with a per share price less than $1.00, the fee will equal the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0005 per share.
- DMMs currently pay no fee when taking liquidity from the order book. Going forward, DMMs will be charged $0.0010 when taking liquidity. This fee will offset the $0.0010 per share rebate the Exchange will pay the customer providing liquidity on the contra side of the transaction.
- DMMs currently receive a rebate per share of $0.0004 for executions at the close. This rebate will be increased from $0.0004 per share to $0.0005 per share.

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 to 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 proposal does not constitute an inequitable allocation of dues, fees and other charges as it provides the DMMs appropriate incentives to act as liquidity providers and supports them in performing their central function in the Exchange's market model.

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 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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder.[7]

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–NYSE–2009–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–22. 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, 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 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 No. SR–NYSE–2009–22 and should be submitted on or before March 31, 2009.

[3] *See* e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated March 2, 2009.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4960 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59489; File No. SR–NYSE–2009–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 123C To Provide the Exchange With the Ability To Temporarily Suspend Certain NYSE Requirements Relating to the Closing of Securities at the Exchange

March 3, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 19, 2009, New York Stock Exchange LLC (''NYSE'' or ''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 prepared by the self-regulatory organization. On March 2, 2009, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123C to provide the Exchange with the ability to temporarily suspend certain NYSE requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at *http://www.nyse.com*, 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Rule 123C to provide the Exchange with the ability to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The amendments proposed for NYSE Rule 123C are similar in substance to recent amendments to Rule 48 that added an extreme market volatility condition at the close. With this rule filing, the Exchange proposes to delete those provisions from Rule 48 and add them in modified form to Rule 123C. The Exchange also proposes to amend Rule 48(c)(2) to conform the rule to the actual practice of how the Exchange notifies the Commission staff when a Rule 48 condition has been declared.[4]

Background

On October 2, 2008, the Exchange filed for immediate effectiveness to amend NYSE Rule 48 to provide the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.[5] The Exchange amended Rule 48 in order to respond swiftly to market conditions at that time. Those amendments are temporary and will end on March 27, 2009.[6]

In that filing, the Exchange amended Rule 48 to include the close of trading as a time when a qualified Exchange officer would be permitted to declare an extreme market volatility condition. In such event, the Exchange could temporarily suspend NYSE Rules 52 (Hours of Operation) and 123C(1) and (2) (Market on the Close Policy and Expiration Policy), provided that certain requirements are met.

To enable a qualified Exchange officer to declare a Rule 48 condition at the close, the Exchange amended Rule 48(c) to include that a qualified Exchange officer may consider the volatility during that day's trading session and evidence of significant order imbalances across the market at the close for purposes of determining whether to declare an extreme market volatility condition at the close. Under amended Rule 48, an extreme market volatility condition at the close is a separate event and must be considered in light of the facts and circumstances leading to the close. A Rule 48 condition at the open of trading does not extend to the close; a qualified Exchange officer needs to make an independent determination to invoke Rule 48 at the close regardless of whether Rule 48 was invoked at the open. Such a Rule 48 condition at the close must be declared by a qualified Exchange officer before the scheduled close of trading.

Once an extreme market volatility condition at the close has been declared Floor wide, under NYSE Rule 48(b)(2)(A), the Exchange may temporarily suspend Rule 52 on a security-by-security basis so that interest can be solicited and entered into Exchange systems to offset an imbalance in a security that may be present after the scheduled close of trading. During an extreme market volatility condition, interest may be solicited—including interest that may not have been present prior to 4 p.m.—to offset any imbalance that may exist as of 4 p.m. (or earlier, in the case of an earlier scheduled close).[7] If offsetting interest is received in response to such solicitation, rather than have the DMM represent such offsetting interest in the close pursuant to Rule 902, such interest could be entered by the DMM directly into Exchange systems on behalf of the member or member organization representing such interest. Because Exchange systems do not allow for the electronic entry of orders after 4 p.m., such interest must be represented manually by a Floor broker in the closing auction process and entered into Exchange systems by the DMM by no later than 4:30 p.m.[8] The entry of any orders after 4 p.m. pursuant to the rule must be under the supervision and approval of a Floor Governor.[9]

To ensure a complete audit trail, any offsetting interest entered after 4 p.m. during an extreme market volatility condition must also be entered into the Front End Systemic Capture database (''FESC''), as required by NYSE Rule

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Alternext US LLC has submitted a companion rule filing to conform Rules 48 and 123C–NYSE Alternext Equities to the changes proposed in this filing. *See* SR–NYSEALTR–2009–15, formally submitted February 20, 2009.

[5] *See* SEC Release No. 58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR–NYSE–2008–102).

[6] *See* NYSE Rule 48.10.

[7] *See* NYSE Rule 48(b)(2)(A)(i).

[8] *See* NYSE Rule 48(b)(2)(A)(ii).

[9] *See* NYSE Rule 48(b)(2)(A)(iv).

123. Because such interest may not have been known until after 4 p.m., under NYSE Rule 48(b)(2)(A)(iii), a Floor broker may represent such offsetting interest after 4 p.m. without first entering the details of the order into FESC, as required by NYSE Rule 123, so long as such orders are entered into FESC on an ''as of'' basis immediately following execution of the order.

During an extreme market volatility condition at the close, the Exchange also has the ability to temporarily suspend, on a security-by-security basis, the NYSE Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. Under NYSE Rule 48(b)(2)(B), only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation. In other words, an MOC or LOC order that is as a result of a legitimate error that would have no impact on the closing price could not take advantage of the proposed temporary suspension, even in an extreme market volatility condition. If it is determined that such an MOC/LOC legitimate error would significantly dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. To further ensure that the ability to cancel an MOC or LOC order after 3:50 is not abused, under NYSE Rule 48(b)(2)(B)(iii), such an order can be cancelled or reduced only with the supervision and approval of both an Executive Floor Governor and a qualified Exchange officer. In the event an Executive Floor Governor is not available, a Floor Governor's approval must be obtained.

Proposed Amendments to Rule 123C

The Exchange believes that the temporary amendments to Rule 48 provide the Exchange with invaluable tools to ensure a fair and orderly close during extreme situations. However, the Exchange does not believe that a Floor-wide condition needs to be present in order to warrant the use of these tools. The Exchange therefore proposes to adopt the amendments to Rule 48 on a permanent basis by deleting those provisions from Rule 48 and moving them to NYSE Rule 123C. As part of the amendments to Rule 123C, the Exchange further proposes modifying the terms of the temporary suspensions by permitting the Exchange to invoke such relief on a security-by-security basis without first declaring a Floor-wide extreme market volatility condition and codifying certain practices for the entry of orders after 4 p.m.

A. Relocating Temporary Suspensions to Rule 123C

As noted above, the amendments to Rule 48 were adopted as an emergency measure to respond to the extreme market volatility that the markets experienced in September and October 2008. Under current Rule 48, the Exchange must first declare a Floor-wide extreme market volatility condition before it can consider, on a security-by-security basis, whether to temporarily suspend either Rule 52 or Rule 123C(1) or (2). Because the temporary suspensions are already granted on a security-by-security basis, the Exchange does not believe that going forward it needs to first declare a Floor-wide event in order to provide relief on an individual security basis. Indeed, the need for declaring a Floor-wide extreme market volatility condition before 4 p.m. could hamper the ability of the Exchange to invoke the temporary suspensions when they are needed most.

For example, during normal market conditions that would not otherwise warrant a Rule 48 condition at the close, Exchange systems may receive a large market order in a security at 3:59:59 p.m. Such a large order entered so near to the close could cause the type of extreme imbalance that would merit a temporary suspension of Rule 52, yet such relief would be unavailable because overall market conditions did not require a Rule 48 condition. The Exchange therefore believes that the ability to temporarily suspend rules at the close should be part of Rule 123C, which governs the closing process at the Exchange, and be available on a security-by-security basis, even after 4 p.m.[10] The Exchange therefore proposes deleting the extreme market volatility at the close condition and returning Rule 48 to a form substantively identical to its form prior to the October 2, 2008 amendments to that rule.

In deleting the provisions of Rule 48 condition at the close and moving those temporary suspensions to Rule 123C, the Exchange proposes certain modifications to the application of the temporary suspensions. These modifications are designed to provide clarity of how this tool should be used. Namely, the ability to temporarily suspend NYSE rules at the close should be used sparingly and only in extreme situations.

The Exchange therefore proposes to qualify that temporary suspensions under proposed Rule 123C(8) are intended to be used to prevent a closing price dislocation that may result from an order entered into Exchange systems, or represented to a DMM orally at or near the close, that may result in an extreme order imbalance at or near the close.[11] In such case, as with Rule 48, the rules that may be suspended are Rules 52 (Hours of Operation) and Rules 123C(1) and (2) (Market on the Close Policy and Expiration Policy).

B. Temporary Suspension of Rule 52

As with Rule 48, the Exchange proposes to provide for the ability to temporarily suspend Rule 52 for the sole purpose of allowing the entry of orders after 4 p.m. to offset an extreme order imbalance at the close. As proposed, the process replaces the more cumbersome Rule 902 process, whereby the DMM represents interest on behalf of a Floor broker in the close on a riskless basis and then enters a coupled order in Crossing Session I to liquidate the DMM position taken on behalf of the Floor broker.[12]

With respect to the temporary suspension of Rule 52, the Exchange proposes to adopt without change the language of Rule 48(b)(2)(A)(i) and (iii) (proposed as NYSE Rule 123C(8)(a)(1)(i) and (v)). These provisions concern, respectively, the purpose of soliciting orders after 4 p.m. and the use of the FESC system on an ''as of'' basis following execution of an order.

The Exchange proposes to codify as NYSE Rule 123C(8)(a)(1)(ii) that when soliciting orders to offset an imbalance in a security that may exist after 4 p.m., such interest will be solicited from off-Floor participants directly and via their Floor broker representatives.[13] Such solicitation requests shall be transmitted electronically both off-Floor and on-Floor and shall include, at a minimum, information about the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time.

As proposed, the order acceptance cut-off time included in the solicitation request would be a time period designated by the Exchange. Because the goal is to close NYSE-listed securities as close to the closing bell as possible, such time period will

[10] *See* proposed Rule 123C(8)(c).

[11] *See* proposed Rule 123C(8)(a).

[12] *See* NYSE Rules 902(a)(ii)(B) and 903(d)(ii).

[13] Interest is solicited from off-Floor participants via NYSE Trader Update Messages, which is an NYSE product with over 2,000 subscribers that provides a wide range of up-to-the minute notices of particular interest to the professional trading community. NYSE Trader Updates provide messages both via e-mail and on an RSS subscription basis.

generally be no longer than five minutes. As in Rule 48(b)(2)(A)(ii), in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier scheduled close). The Exchange includes this 4:30 p.m. time period as an outside limit and it is not intended to provide a 30-minute window within which to receive offsetting interest, or that the Exchange seeks to close securities at 4:30 p.m. Rather, as proposed, if a solicitation request is transmitted at 4:02 p.m., the Exchange generally would include an order acceptance cut-off time of five minutes, requiring all offsetting interest to be received by 4:07 p.m. so that the DMM can close the security on or about 4:07 p.m. In the rare circumstance that a solicitation request is not transmitted until 4:27 p.m., the order acceptance cut-off time would be 4:30 p.m., and not a five-minute period. The 4:30 p.m. end time is therefore included to ensure that this proposed temporary suspension of Rule 52 would not be used to extend the close indefinitely.

The Exchange also proposes adding conditions on the type of order that may be entered in response to such a solicitation request. As proposed in Rule 123C(8)(a)(1)(iii), any offsetting interest received in response to a solicitation request must be a limit order priced no worse than the last sale and irrevocable. Therefore, if there is a buy imbalance, the offsetting interest must be sell orders priced no lower than the last sale price, or if there is a sell imbalance, the offsetting interest must be buy orders priced no higher than the last sale price. The Exchange believes that these conditions are necessary to ensure that the offsetting interest received is simply that: Interest that is intended to offset the existing imbalance to ensure that the closing price is not too far dislocated from the last sale. The Exchange does not believe that this process should be used to re-open the auction market or to permit the imbalance to swing in the opposite direction.

The Exchange also proposes to add to the rule certain parameters regarding the timing of the closing of a security when such offsetting interest is solicited. As proposed in Rule 123C(8)(a)(1)(iv), in such circumstances, the DMM should close the security the earlier of the order acceptance cut-off time or if the imbalance is paired off at or reasonably contiguous to the last sale price. The Exchange believes that this provision will enable the DMM to arrange for a fair and orderly close that is as close to 4 p.m. as possible. For example, if the Exchange receives a limited response to the solicitation request, the DMM would have up to the order acceptance cut-off time for orders to be entered. If, however, the DMM receives sufficient interest before the order acceptance cut-off time to close the security either at the last sale price, or at a reasonably contiguous price to the last sale price, the DMM could close the security earlier. As proposed, a reasonably contiguous price refers to a price point that is within cents of the last sale price, and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to the last sale price. As discussed in more detail below in subsection D, such closings would be subject to approval of either an Executive Floor Governor or qualified NYSE Euronext staff employee and supervision of a qualified Exchange Officer, as defined in Rule 48(d).

The Exchange believes that the parameters on when to close the security are necessary to ensure that securities trading at the Exchange close as near to 4 p.m. as possible, notwithstanding the fact that the Exchange seeks additional offsetting interest after 4 p.m. In either case, the Exchange proposes that any offsetting interest entered after 4 p.m., but before the DMM closes the security, would trade on parity.[14] As discussed in greater detail in the Exchange's proposal to adopt the Next Generation Market Model,[15] under the Exchange's parity model, Exchange systems will divide the size of the executing order by the number of participants. The DMM and each Floor broker are each considered a single participant. A Floor broker that represents multiple orders gets parity for the aggregate of orders. With parity, the total number of shares to be allocated to each participant will be distributed equally among the participants where possible and executions will be allocated in round-lots. In the event the number of shares to be executed at the price point is insufficient to allocate round lots to all the participants eligible to receive an execution at the price point, the Exchange systems will create an allocation wheel of the eligible participants at the price point and the available shares will be distributed to the participants in turn. If the DMM closes the security before the order acceptance cut-off time, any interest received before closing the security would trade on parity with other interest, including the DMM's interest at the close.

The Exchange also proposes to maintain, as in Rule 48(b)(2)(A)(ii), that any offsetting interest must be represented by a Floor broker. As noted in the Exchange's filing to amend Rule 48, Exchange systems do not have the capability to receive electronic interest after 4 p.m. As with any technology, it would be possible to reconfigure Exchange systems to accept orders electronically after 4 p.m. However, such technology changes would be costly and would divert resources away from other necessary technology changes that are already scheduled. Therefore, even if the Exchange could make such technology changes, they likely could not be implemented until mid to late 2009, and at great cost.

The benefit, however, to implementing such a technology change would be limited. The temporary suspension of Rule 52 to attract offsetting interest is intended to be used for extreme, and likely rare circumstances where there exists such a large imbalance at the close that the DMM could not close the security without significantly dislocating the price of the security. For example, since October 2, 2008, when the Exchange adopted the amendments to Rule 48, the Exchange has invoked Rule 48 at the close eight times. However, because the DMM does not know what the actual imbalance will be until 4 p.m., the Exchange has solicited offsetting interest for only one security on one such trading day pursuant to these procedures. The Exchange notes that this has been a period of historic market volatility; the Exchange therefore expects that in times of calmer markets, the relief requested would be used in even rarer circumstances.

The Exchange further notes that requiring Floor brokers to represent such offsetting interest does not unfairly discriminate against any market participants. The requirement to use a Floor broker, who would be acting only as an agent, does not deny anyone access to trading at the Exchange. It simply requires an agent as intermediary. Indeed, during the inherently manual process of closing a security, using a Floor broker to represent offsetting interest will provide customers with the most up-to-date

[14] The Exchange notes that all MOC and marketable LOC orders entered before 4 p.m. that otherwise would have participated in the close will continue to participate in the close. Because the MOC/LOC imbalance dictates the closing price (*see* Rule 123C(3)), any additional interest solicited after 4 p.m. under proposed Rule 123C(8)(a)(1) is simply to ensure that the existing imbalance of MOC and marketable LOC orders can be filled at a price that does not cause a significant price dislocation from the last sale price.

[15] *See* SEC Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46).

information about the closing process in such a scenario.

Moreover, the imbalance that would warrant such a temporary suspension would likely be of such a size that the type of customers that would be able to meaningfully and timely respond to such a solicitation request are sophisticated market participants who likely already have, or could easily arrange for, a relationship with a Floor broker to represent orders on their behalf. Such sophisticated participants have the wherewithal to enter into arrangements with Floor brokers that are financially competitive with entering orders directly into Exchange systems, *e.g.*, via reduced commissions or pass through of Floor broker rebates.

The Exchange therefore believes that the time and cost that would be necessary to reconfigure Exchange systems to electronically accept orders after 4 p.m. for this limited purpose far outweighs any benefit that may accrue from such technology changes. In any event, the Exchange believes that more information is necessary before the Exchange undertakes to implement any such technology change. The Exchange therefore proposes that six months after the approval of this proposed rule change, the Exchange will provide the Commission with information regarding how many times a Rule 52 temporary suspension under proposed Rule 123C(8)(a)(1) has been invoked. At that time, both the Exchange and the Commission can make a more informed decision of whether the benefit in accepting orders electronically after 4 p.m. outweighs the costs associated with making such changes. To provide both the Exchange and the Commission with time to evaluate the proposed rule, the Exchange proposes that Rule 123C(8)(a)(1) be approved on a Pilot basis to end six months after the approval date of this filing.

C. Temporary Suspension of Rule 123C(1) and (2)

The Exchange proposes to adopt permanently the provisions of Rule 48(b)(2)(B) as proposed Rule 123C(8)(a)(2), without any change. Therefore, as with Rule 48, the Exchange would have the ability to temporarily suspend, on a security-by-security basis, the NYSE Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. The same conditions that were adopted as part of Rule 48 would apply here as well, *i.e.*, that only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation and that if it is determined that such an MOC/LOC legitimate error would dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. As discussed below, the Exchange proposes to move Rule 48(b)(2)(B)(iii) to proposed Rule 123C(8)(b).

D. Parameters for Obtaining Temporary Rule Suspensions

The Exchange further proposes codifying the practices concerning how a temporary suspension under proposed Rule 123C(8)(a) would be invoked and who should be involved. As proposed in Rule 123C(8)(b), only the DMM assigned to a particular security may request a temporary suspension under proposed section 8(a) of the Rule. The Exchange believes that because the DMM is responsible for facilitating the close of trading of securities registered to that DMM, including supplying liquidity if needed, the DMM is in the unique position to know whether he or she would need additional interest to ensure a fair or orderly close.

To ensure that such temporary suspensions are not invoked indiscriminately, the Exchange further proposes that any such determination, as well as any entry or cancellation of orders or closing of a security under proposed Rule 123C(8)(a), must be approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined in NYSE Rule 46(b)(v). The Exchange also proposes requiring that any temporary suspensions under proposed NYSE Rule 123C(8)(a) should be under the supervision of a qualified Exchange Officer, as defined in NYSE Rule 48(d).

These requirements are identical to the requirement under Rule 48(b)(2)(B)(iii), but more stringent than the current requirement under Rule 48(b)(2)(A)(iv), which requires only the supervision of a Floor Governor. The Exchange believes that these heightened approval and supervision requirements will ensure that, as contemplated by the proposed rule, only extreme situations such as when a late-arriving order would cause significant price dislocation at the close would result in a temporary suspension of Exchange rules at the close. To assist the DMM and officials, proposed Rule 123C(8)(b) identifies a number of factors that may be considered when making such a determination. Such factors include, but are not limited to, when the order(s) that impacted the imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation.

Proposed Amendment to Rule 48(c)(2)

In addition to the above-described amendments, the Exchange also proposes to amend Rule 48(c)(2), which concerns the method by which the Exchange notifies Commission staff when it declares a Rule 48 extreme market volatility condition.

The current rule provides that the qualified Exchange officer will make a reasonable effort to consult with Commission staff before declaring an extreme market volatility condition and granting a suspension of the NYSE rules or procedures. In the event that the qualified Exchange officer cannot reach the Commission staff, the qualified Exchange officer will, as promptly as practicable in the circumstances, inform the Commission staff of such declaration.

Given the limited relief that can be granted during a Rule 48 condition—certain Floor Official approvals are suspended and mandatory indications can be suspended—the Exchange believes that the requirement to consult with Commission staff before declaring an extreme market volatility condition imposes an undue burden on regulatory resources. Accordingly, the Exchange proposes to amend Rule 48(c)(2) to delete the requirement that the qualified Exchange officer undertake reasonable efforts to consult with Commission staff before declaring an extreme market volatility condition. As required by the rule, the Exchange will continue to inform the Commission staff, as promptly as practicable under the circumstances, when it has declared a Rule 48 extreme market volatility condition.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [16] that an Exchange have rules that are designed to promote just and equitable principles of trade, 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. As noted above, the proposed rule is intended to be used in extreme circumstances when a large order imbalance or order entered in error could cause a closing price to be far dislocated from the last sale price. The rule is therefore intended to protect

[16] 15 U.S.C. 78f(b)(5).

investors and the public interest to ensure that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–18. 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 offices 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–2009–18 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59488; File No. SR–NYSEALTR–2009–15]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 123C To Provide the Exchange With the Ability To Temporarily Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

March 3, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 20, 2009, NYSE Alternext US LLC (''Exchange'' or ''NYSE Alternext'') 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 self-regulatory organization. On March 2, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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The Exchange proposes to amend Rule 123C to provide the Exchange with the ability to temporarily suspend certain Exchange requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at *http://www.nyse.com,* the Exchange, 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

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 123C—NYSE Alternext Equities to provide the Exchange with the ability to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The amendments proposed for Rule 123C—NYSE Alternext Equities are similar in substance [to] current Rule 48 extreme market volatility condition at the close provisions. With this rule filing, the Exchange proposes to delete those provisions from Rule 48 and add them in modified form to Rule 123C. The Exchange also proposes to amend Rule 48(c)(2) to conform the rule to the actual

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

practice of how the Exchange notifies the Commission staff when a Rule 48 condition has been declared.[4]

Background

As described more fully in a related rule filing,[5] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Alternext U.S. LLC (''NYSE Alternext'' or the ''Exchange''), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[6] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[7]

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.[8] The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Current Rule 48—NYSE Alternext Equities

Rule 48—NYSE Alternext Equities provides the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close. This provision of Rule 48 is temporary and will end on March 27, 2009.[9]

Rule 48 now includes the close of trading as a time when a qualified Exchange officer would be permitted to declare an extreme market volatility condition. In such event, the Exchange could temporarily suspend Rules 52 (Hours of Operation) and 123C(1) and (2) (Market on the Close Policy and Expiration Policy), provided that certain requirements are met.

To enable a qualified Exchange officer to declare a Rule 48 condition at the close, Rule 48(c) includes that a qualified Exchange officer may consider the volatility during that day's trading session and evidence of significant order imbalances across the market at the close for purposes of determining whether to declare an extreme market volatility condition at the close. Under Rule 48, an extreme market volatility condition at the close is a separate event and must be considered in light of the facts and circumstances leading to the close. A Rule 48 condition at the open of trading does not extend to the close; a qualified Exchange officer needs to make an independent determination to invoke Rule 48 at the close regardless of whether Rule 48 was invoked at the open. Such a Rule 48 condition at the close must be declared by a qualified Exchange officer before the scheduled close of trading.

Once an extreme market volatility condition at the close has been declared Floor wide, under Rule 48(b)(2)(A), the Exchange may temporarily suspend Rule 52 on a security-by-security basis so that interest can be solicited and entered into Exchange systems to offset an imbalance in a security that may be present after the scheduled close of trading. During an extreme market volatility condition, interest may be solicited—including interest that may not have been present prior to 4 p.m.—to offset any imbalance that may exist as of 4 p.m. (or earlier, in the case of an earlier scheduled close).[10] If offsetting interest is received in response to such solicitation, rather than have the DMM represent such offsetting interest in the close pursuant to Rule 902, such interest could be entered by the DMM directly into Exchange systems on behalf of the member or member organization representing such interest. Because Exchange systems do not allow for the electronic entry of orders after 4 p.m., such interest must be represented manually by a Floor broker in the closing auction process and entered into Exchange systems by the DMM by no later than 4 p.m.[11] The entry of any orders after 4 p.m. pursuant to the rule must be under the supervision and approval of a Floor Governor.[12]

To ensure a complete audit trail, any offsetting interest entered after 4 p.m. during an extreme market volatility condition must also be entered into the Front End Systemic Capture database (''FESC''), as required by Rule 123—NYSE Alternext Equities. Because such interest may not have been known until after 4 p.m., under Rule 48(b)(2)(A)(iii), a Floor broker may represent such offsetting interest after 4 p.m. without first entering the details of the order into FESC, as required by Rule 123, so long as such orders are entered into FESC on an ''as of'' basis immediately following execution of the order.

During an extreme market volatility condition at the close, the Exchange also has the ability to temporarily suspend, on a security-by-security basis, the Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. Under Rule 48(b)(2)(B), only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation. In other words, an MOC or LOC order that is as a result of a legitimate error that would have no impact on the closing price could not take advantage of the proposed temporary suspension, even in an extreme market volatility condition. If it is determined that such an MOC/LOC legitimate error would significantly dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. To further ensure that the ability to cancel an MOC or LOC order after 3:50 is not abused, under Rule 48(b)(2)(B)(iii), such an order can be cancelled or reduced only with the supervision and approval of both an Executive Floor Governor *and* a

[4] The purpose of the proposed rule changes is to amend Rules 48 and 123C—NYSE Alternext Equities to conform with proposed amendments to corresponding NYSE Rules 48 and 123C submitted in a companion filing by the New York Stock Exchange LLC (''NYSE''). *See* SR–NYSE–2009–18, formally submitted February 19, 2009.

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); *and* Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[9] *See* Rule 48.10.

[10] *See* Rule 48(b)(2)(A)(i).

[11] *See* Rule 48(b)(2)(A)(ii).

[12] *See* Rule 48(b)(2)(A)(iv).

qualified Exchange officer. In the event an Executive Floor Governor is not available, a Floor Governor's approval must be obtained.

Proposed Amendments to Rule 123C—NYSE Alternext Equities

The Exchange believes that the temporary provisions to Rule 48 provide the Exchange with invaluable tools to ensure a fair and orderly close during extreme situations. However, the Exchange does not believe that a Floor-wide condition needs to be present in order to warrant the use of these tools. The Exchange therefore proposes to adopt the amendments to Rule 48 on a permanent basis by deleting those provisions from Rule 48 and moving them to Rule 123C—NYSE Alternext Equities. As part of the amendments to Rule 123C, the Exchange further proposes modifying the terms of the temporary suspensions by permitting the Exchange to invoke such relief on a security-by-security basis without first declaring a Floor-wide extreme market volatility condition and codifying certain practices for the entry of orders after 4 p.m.

A. Relocating Temporary Suspensions to Rule 123C

As noted above, the Rule 48 extreme market volatility at the close conditions are temporary and will end on March 27, 2009. Under current Rule 48, the Exchange must first declare a Floor-wide extreme market volatility condition before it can consider, on a security-by-security basis, whether to temporarily suspend either Rule 52 or Rule 123C(1) or (2). Because the temporary suspensions are already granted on a security-by-security basis, the Exchange does not believe that going forward it needs to first declare a Floor-wide event in order to provide relief on an individual security basis. Indeed, the need for declaring a Floor-wide extreme market volatility condition before 4 p.m. could hamper the ability of the Exchange to invoke the temporary suspensions when they are needed most.

For example, during normal market conditions that would not otherwise warrant a Rule 48 condition at the close, Exchange systems may receive a large market order in a security at 3:59:59 p.m. Such a large order entered so near to the close could cause the type of extreme imbalance that would merit a temporary suspension of Rule 52, yet such relief would be unavailable because overall market conditions did not require a Rule 48 condition. The Exchange therefore believes that the ability to temporarily suspend rules at the close should be part of Rule 123C—NYSE Alternext Equities, which governs the closing process at the Exchange, and be available on a security-by-security basis, even after 4 p.m.[13] The Exchange therefore proposes deleting the extreme market volatility at the close condition from Rule 48.

In deleting the provisions of Rule 48 condition at the close and moving those temporary suspensions to Rule 123C, the Exchange proposes certain modifications to the application of the temporary suspensions. These modifications are designed to provide clarity of how this tool should be used. Namely, the ability to temporarily suspend Exchange rules at the close should be used sparingly and only in extreme situations.

The Exchange therefore proposes to qualify that temporary suspensions under proposed Rule 123C(8) are intended to be used to prevent a closing price dislocation that may result from an order entered into Exchange systems, or represented to a DMM orally at or near the close, that may result in an extreme order imbalance at or near the close.[14] In such case, as with Rule 48, the rules that may be suspended are Rule 52—NYSE Alternext Equities (Hours of Operation) and Rules 123C(1) and (2)—NYSE Alternext Equities (Market on the Close Policy and Expiration Policy).

B. Temporary Suspension of Rule 52—NYSE Alternext Equities

As with Rule 48, the Exchange proposes to provide for the ability to temporarily suspend Rule 52 for the sole purpose of allowing the entry of orders after 4 p.m. to offset an extreme order imbalance at the close. As proposed, the process replaces the more cumbersome Rule 902 process, whereby the DMM represents interest on behalf of a Floor broker in the close on a riskless basis and then enters a coupled order in Crossing Session I to liquidate the DMM position taken on behalf of the Floor broker.[15]

With respect to the temporary suspension of Rule 52, the Exchange proposes to adopt without change the language of Rule 48(b)(2)(A)(i) and (iii) (proposed as Rule 123C(8)(a)(1)(i) and (v)). These provisions concern, respectively, the purpose of soliciting orders after 4 p.m. and the use of the FESC system on an ''as of'' basis following execution of an order.

The Exchange proposes to codify as Rule 123C(8)(a)(1)(ii) that when soliciting orders to offset an imbalance in a security that may exist after 4 p.m., such interest will be solicited from off-Floor participants directly and via their Floor broker representatives.[16] Such solicitation requests shall be transmitted electronically both off-Floor and on-Floor and shall include, at a minimum, information about the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time.

As proposed, the order acceptance cut-off time included in the solicitation request would be a time period designated by the Exchange. Because the goal is to close Exchange-listed securities as close to the closing bell as possible, such time period will generally be no longer than five minutes. As in Rule 48(b)(2)(A)(ii), in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier scheduled close). The Exchange includes this 4:30 p.m. time period as an outside limit and it is not intended to provide a 30-minute window within which to receive offsetting interest, or that the Exchange seeks to close securities at 4:30 p.m. Rather, as proposed, if a solicitation request is transmitted at 4:02 p.m., the Exchange generally would include an order acceptance cut-off time of five minutes, requiring all offsetting interest to be received by 4:07 p.m. so that the DMM can close the security on or about 4:07 p.m. In the rare circumstance that a solicitation request is not transmitted until 4:27 p.m., the order acceptance cut-off time would be 4:30 p.m., and not a five-minute period. The 4:30 p.m. end time is therefore included to ensure that this proposed temporary suspension of Rule 52 would not be used to extend the close indefinitely.

The Exchange also proposes adding conditions on the type of order that may be entered in response to such a solicitation request. As proposed in Rule 123C(8)(a)(1)(iii), any offsetting interest received in response to a solicitation request must be a limit order priced no worse than the last sale and irrevocable. Therefore, if there is a buy imbalance, the offsetting interest must be sell orders priced no lower than the last sale price, or if there is a sell imbalance, the offsetting interest must be buy orders priced no higher than the

[13] *See* proposed Rule 123C(8)(c).

[14] *See* proposed Rule 123C(8)(a).

[15] *See* Rules 902(a)(ii)(B) and 903(d)(ii).

[16] Interest is solicited from off-Floor participants via NYSE Trader Update Messages, which is an NYSE product with over 2,000 subscribers that provides a wide range of up-to-the minute notices of particular interest to the professional trading community about both NYSE and NYSE Alternext Equities. NYSE Trader Updates provide messages both via email and on an RSS subscription basis.

last sale price. The Exchange believes that these conditions are necessary to ensure that the offsetting interest received is simply that: interest that is intended to offset the existing imbalance to ensure that the closing price is not too far dislocated from the last sale. The Exchange does not believe that this process should be used to re-open the auction market or to permit the imbalance to swing in the opposite direction.

The Exchange also proposes to add to the rule certain parameters regarding the timing of the closing of a security when such offsetting interest is solicited. As proposed in Rule 123C(8)(a)(1)(iv), in such circumstances, the DMM should close the security the earlier of the order acceptance cut-off time or if the imbalance is paired off at or reasonably contiguous to the last sale price. The Exchange believes that this provision will enable the DMM to arrange for a fair and orderly close that is as close to 4 p.m. as possible. For example, if the Exchange receives a limited response to the solicitation request, the DMM would have up to the order acceptance cut-off time for orders to be entered. If, however, the DMM receives sufficient interest before the order acceptance cut-off time to close the security either at the last sale price, or at a reasonably contiguous price to the last sale price, the DMM could close the security earlier. As proposed, a reasonably contiguous price refers to a price point that is within cents of the last sale price, and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to the last sale price. As discussed in more detail below in subsection D, such closings would be subject to approval of either an Executive Floor Governor or qualified NYSE Euronext staff employee and supervision of a qualified Exchange Officer, as defined in Rule 48(d).

The Exchange believes that the parameters on when to close the security are necessary to ensure that securities trading at the Exchange close as near to 4 p.m. as possible, notwithstanding the fact that the Exchange seeks additional offsetting interest after 4 p.m. In either case, the Exchange proposes that any offsetting interest entered after 4 p.m., but before the DMM closes the security, would trade on parity.[17] As discussed in greater detail in the NYSE's proposal to adopt the Next Generation Market Model,[18] under the Exchange's parity model, Exchange systems will divide the size of the executing order by the number of participants. The DMM and each Floor broker are each considered a single participant. A Floor broker that represents multiple orders gets parity for the aggregate of orders. With parity, the total number of shares to be allocated to each participant will be distributed equally among the participants where possible and executions will be allocated in round lots. In the event the number of shares to be executed at the price point is insufficient to allocate round lots to all the participants eligible to receive an execution at the price point, the Exchange systems will create an allocation wheel of the eligible participants at the price point and the available shares will be distributed to the participants in turn. If the DMM closes the security before the order acceptance cut-off time, any interest received before closing the security would trade on parity with other interest, including the DMM's interest at the close.

The Exchange also proposes to maintain, as in Rule 48(b)(2)(A)(ii), that any offsetting interest must be represented by a Floor broker. Exchange systems do not have the capability to receive electronic interest after 4 p.m. As with any technology, it would be possible to reconfigure Exchange systems to accept orders electronically after 4 p.m. However, such technology changes would be costly and would divert resources away from other necessary technology changes that are already scheduled. Therefore, even if the Exchange could make such technology changes, they likely could not be implemented until mid to late 2009, and at great cost.

The benefit, however, to implementing such a technology change would be limited. The temporary suspension of Rule 52 to attract offsetting interest is intended to be used for extreme, and likely rare circumstances where there exists such a large imbalance at the close that the DMM could not close the security without significantly dislocating the price of the security. The Exchange notes that this has been a period of historic market volatility; the Exchange therefore expects that in times of calmer markets, the relief requested would be used in even rarer circumstances.

The Exchange further notes that requiring Floor brokers to represent such offsetting interest does not unfairly discriminate against any market participants. The requirement to use a Floor broker, who would be acting only as an agent, does not deny anyone access to trading at the Exchange. It simply requires an agent as intermediary. Indeed, during the inherently manual process of closing a security, using a Floor broker to represent offsetting interest will provide customers with the most up-to-date information about the closing process in such a scenario.

Moreover, the imbalance that would warrant such a temporary suspension would likely be of such a size that the type of customers that would be able to meaningfully and timely respond to such a solicitation request are sophisticated market participants who likely already have, or could easily arrange for, a relationship with a Floor broker to represent orders on their behalf. Such sophisticated participants have the wherewithal to enter into arrangements with Floor brokers that are financially competitive with entering orders directly into Exchange systems, *e.g.*, via reduced commissions or pass through of Floor broker rebates.

The Exchange therefore believes that the time and cost that would be necessary to reconfigure Exchange systems to electronically accept orders after 4 p.m. for this limited purpose far outweighs any benefit that may accrue from such technology changes. In any event, the Exchange believes that more information is necessary before the Exchange undertakes to implement any such technology change. The Exchange therefore proposes that six months after the approval of this proposed rule change, the Exchange will provide the Commission with information regarding how many times a Rule 52 temporary suspension under proposed Rule 123C(8)(a)(1) has been invoked. At that time, both the Exchange and the Commission can make a more informed decision of whether the benefit in accepting orders electronically after 4 p.m. outweighs the costs associated with making such changes. To provide both the Exchange and the Commission with time to evaluate the proposed rule, the Exchange proposes that Rule 123C(8)(a)(1) be approved on a Pilot basis to end six months after the approval date of this filing.

[17] The Exchange notes that all MOC and marketable LOC orders entered before 4:00 p.m. that otherwise would have participated in the close will continue to participate in the close. Because the MOC/LOC imbalance dictates the closing price (see Rule 123C(3)), any additional interest solicited after 4:00 p.m. under proposed Rule 123C(8)(a)(1) is simply to ensure that the existing imbalance of MOC and marketable LOC orders can be filled at a price that does not cause a significant price dislocation from the last sale price.

[18] *See* SEC Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR-NYSE–2008–46).

C. Temporary Suspension of Rule 123C(1) and (2)

The Exchange proposes to adopt permanently the provisions of Rule 48(b)(2)(B) as proposed Rule 123C(8)(a)(2), without any change. Therefore, as with Rule 48, the Exchange would have the ability to temporarily suspend, on a security-by-security basis, the Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. The same conditions that were adopted as part of Rule 48 would apply here as well, *i.e.* , that only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation and that if it is determined that such an MOC/LOC legitimate error would dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. As discussed below, the Exchange proposes to move Rule 48(b)(2)(B)(iii) to proposed Rule 123C(8)(b).

D. Parameters for Obtaining Temporary Rule Suspensions

The Exchange further proposes codifying the practices concerning how a temporary suspension under proposed Rule 123C(8)(a) would be invoked and who should be involved. As proposed in Rule 123C(8)(b), only the DMM assigned to a particular security may request a temporary suspension under proposed section 8(a) of the Rule. The Exchange believes that because the DMM is responsible for facilitating the close of trading of securities registered to that DMM, including supplying liquidity if needed, the DMM is in the unique position to know whether he or she would need additional interest to ensure a fair or orderly close.

To ensure that such temporary suspensions are not invoked indiscriminately, the Exchange further proposes that any such determination, as well as any entry or cancellation of orders or closing of a security under proposed Rule 123C(8)(a), must be approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined in Rule 46(b)(v)—NYSE Alternext Equities. The Exchange also proposes requiring that any temporary suspensions under proposed Rule 123C(8)(a) should be under the supervision of a qualified Exchange Officer, as defined in Rule 48(d).

These requirements are identical to the requirement under Rule 48(b)(2)(B)(iii), but more stringent than the current requirement under Rule 48(b)(2)(A)(iv), which requires only the supervision of a Floor Governor. The Exchange believes that these heightened approval and supervision requirements will ensure that, as contemplated by the proposed rule, only extreme situations such as when a late-arriving order would cause significant price dislocation at the close would result in a temporary suspension of Exchange rules at the close. To assist the DMM and officials, proposed Rule 123C(8)(b) identifies a number of factors that may be considered when making such a determination. Such factors include, but are not limited to, when the order(s) that impacted the imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation.

Proposed Amendment to Rule 48(c)(2)—NYSE Alternext Equities

In addition to the above-described amendments, the Exchange also proposes to amend Rule 48(c)(2), which concerns the method by which the Exchange notifies Commission staff when it declares a Rule 48 extreme market volatility condition.

The current rule provides that the qualified Exchange officer will make a reasonable effort to consult with Commission staff before declaring an extreme market volatility condition and granting a suspension of the Exchange rules or procedures. In the event that the qualified Exchange officer cannot reach the Commission staff, the qualified Exchange officer will, as promptly as practicable in the circumstances, inform the Commission staff of such declaration.

Given the limited relief that can be granted during a Rule 48 condition—certain Floor Official approvals are suspended and mandatory indications can be suspended—the Exchange believes that the requirement to consult with Commission staff before declaring an extreme market volatility condition imposes an undue burden on regulatory resources. Accordingly, the Exchange proposes to amend Rule 48(c)(2) to delete the requirement that the qualified Exchange officer undertake reasonable efforts to consult with Commission staff before declaring an extreme market volatility condition. As required by the rule, the Exchange will continue to inform the Commission staff, as promptly as practicable under the circumstances, when it has declared a Rule 48 extreme market volatility condition.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [19] that an Exchange have rules that are designed to promote just and equitable principles of trade, 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. As noted above, the proposed rule is intended to be used in extreme circumstances when a large order imbalance or order entered in error could cause a closing price to be far dislocated from the last sale price. The rule is therefore intended to protect investors and the public interest to ensure that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[19] 15 U.S.C. 78f(b)(5).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to

Please include File Number SR-NYSEALTR–2009–15 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 offices 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–NYSEALTR–2009–15 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4963 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[TeleSoft Partners II SBIC, L.P.; License No. 09/79–0432]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TeleSoft Partners II SBIC, L.P., 950 Tower Lane, Suite 1600, Foster City, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). TeleSoft Partners II SBIC, L.P. proposes to provide equity financing to Calient Networks, Inc., 2665 North First Street, Suite 204, San Jose, CA 95134. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of section107.730(a)(1) of the Regulations because TeleSoft Partners II, L.P., TeleSoft Partners II QP, L.P. and TeleSoft NP Employee Fund, L.L.C, all Associates of TeleSoft Partners II SBIC, L.P., in the aggregate own more than ten percent of Calient Networks, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 25, 2009.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–4986 Filed 3–9–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6541]

Advisory Committee on International Economic Policy; Notice of Committee Renewal

Renewal of Advisory Committee. The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Committee serves in a solely advisory capacity concerning major issues and problems in international economic policy. The Committee provides information and advice on the effective integration of economic interests into overall foreign policy and on the Department of State's role in advancing American commercial interests in a competitive global economy. The Committee also appraises the role and limits of international economic institutions and advises on the formulation of U.S. economic policy and positions.

This Committee includes representatives of American organizations and institutions having an interest in international economic policy, including representatives of American business, labor unions, public interest groups, and trade and professional associations. The Committee meets at least annually to advise the Department on the full range of international economic policies and issues.

For further information, please call Nancy Smith-Nissley, Senior Coordinator, Office of Economic Policy Analysis and Public Diplomacy, Economic, Energy and Business Affairs Bureau, U.S. Department of State, at (202) 647–1682.

March 2, 2009.

Sandra Clark,

Director, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, Department of State.

[FR Doc. E9–5072 Filed 3–9–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6515]

Notice of Closed Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Tuesday, March 24, from approximately 9 a.m. to 5 p.m., and on Wednesday, March 25, from approximately 9 a.m. to 1 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting the Committee will carry out its interim review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of Nicaragua. The

Committee will conduct an interim review of the effectiveness of the MOU pursuant to the Act and will focus its attention on Article II. This is not a meeting to consider extension of the MOU. Such a meeting will be scheduled and announced in the future and will include a public session.

The Committee will also undertake an internal security and ethics briefing, as required annually.

The Committee's responsibilities are carried out in accordance with provisions of the Act. Related information may be found at *http://exchanges.state.gov/culprop*.

The meeting on March 24–25 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: March 2, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–5071 Filed 3–9–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for public comment.

SUMMARY: The FAA proposes to rule and invites public comment on the release of surplus property land at the Baton Rouge Metropolitan Airport under the provisions of Title 49, U.S.C. Section 47153(c).

DATES: Comments must be received on or before April 9, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76137–4298.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Anthony Marino, Director of Aviation, Baton Rouge Metropolitan Airport at the following address: Baton Rouge Metropolitan Airport, Terminal Building, Suite 300, 9430 Jackie Cochran Drive, Baton Rouge, Louisiana 76137–4298.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones, Program Manager, Federal Aviation Administration, Louisiana/New Mexico Airports Development Office, ASW–640, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the airport sponsor's request to release property at the Baton Rouge Metropolitan Airport.

On February 4, 2009 the FAA determined that the request to release property at the Baton Rouge Metropolitan Airport submitted by the City of Baton Rouge/Parish of East Baton Rouge met the procedural requirements of the Federal Aviation regulations, Part 155. The FAA may approve the request, in whole or in part, no later than March 31, 2009.

The City of Baton Rouge/Parish of East Baton Rouge requests the release of ±1.115 acres (48,569 square feet) of airport property. The release of this airport property along the existing Harding Boulevard will allow for the sale of a portion of said site, also known as Lot #22, to proceed. The sale is estimated to provide $486,000.00 to the City of Baton Rouge/Parish of East Baton Rouge that will allow the City of Baton Rouge/Parish of East Baton Rouge to market subject property for highest and best use, which is deemed to be commercial development. The proceeds obtained from the sale of the land to the highest bidder will be used in the operation and maintenance of the Baton Rouge Metropolitan Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Baton Rouge Metropolitan Airport.

Issued in Fort Worth, Texas on February 26, 2009.

Lacey D. Spriggs,

Acting Manager, Airports Division.

[FR Doc. E9–4955 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

Time and Date: April 2, 2009, from 12 noon until 3 p.m. Eastern Daylight Time.

Place: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

Status: Open to the public.

Matters to be Considered: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Plan Board of Directors at (505) 827–4565.

Dated: March 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–5265 Filed 3–6–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notice for an Alternatives Analysis of Proposed Transit Improvements in Ogden-Weber State University Transit Corridor of Ogden, UT

AGENCY: Federal Transit Administration, DOT.

ACTION: Early scoping notice.

SUMMARY: The Federal Transit Administration (FTA) and the Utah Transit Authority (UTA) issue this early scoping notice to advise other agencies and the public that they intend to explore, in the context of the Council on Environmental Quality's early scoping process, methods of improving transit service in the City of Ogden, Utah. The early scoping process is part of a planning Alternatives Analysis (AA) required by Title 49 United States Code (U.S.C.) Sec. 5309 for the selection of alternatives that will be subject to the appropriate environmental process

under the National Environmental Policy Act (NEPA). Early scoping meetings have been planned and are announced below.

The Ogden-WSU Transit Corridor Alternatives Analysis is focusing on improving transit service in a 5-mile corridor between downtown Ogden and Weber State University (WSU). The entire study area is located within the City of Ogden, Weber County, Utah. The corridor connects the Ogden Intermodal Center/FrontRunner commuter rail station to the area's major employment, housing, commercial and education destinations, including Downtown Ogden, Weber State University, and McKay Dee Hospital. With the connection to FrontRunner commuter rail, the corridor also serves trips to and from the greater Wasatch Front Region. In 2005, the UTA and its regional partners completed a Major Investment Feasibility Study of the corridor. The 2005 study concluded that a corridor connecting downtown Ogden and WSU was a promising candidate for increased transit capital investment, potentially incorporating streetcar or Bus Rapid Transit service. This study also developed local consensus for an initial statement of the Purpose and Need for the project, and evaluated potential alignments and modes.

The planning Alternatives Analysis now being initiated is expected to result in the selection of a Locally Preferred Alternative by the Utah Transit Authority and its partners, which include the Wasatch Front Regional Council, the metropolitan planning organization for the Greater Salt Lake metropolitan area. Other partners include the City of Ogden, Weber County, Weber State University, McKay Dee Hospital, and the Utah Department of Transportation. The Locally Preferred Alternative will then be a ''proposed action,'' subject to an appropriate environmental review under the National Environmental Policy Act (NEPA). If the Preferred Alternative is anticipated to have significant impacts, an environmental impact statement (EIS) would be initiated with a Notice of Intent (NOI) in the **Federal Register**. Public and agency scoping of the EIS would be conducted at that time.

The early scoping notice is intended to generate public comments on the scope of the alternatives analysis. This includes the purpose and need for the project, the range of alternatives, and environmental and community impacts and benefits to be considered in the alternatives analysis.

DATES: Written comments on the scope of the planning Alternatives Analysis, including the alternatives to be considered and the impacts to be assessed should be mailed to Ogden/WSU Transit Corridor Project, c/o Elizabeth Scanlon, UTA, 669 West 200 South, Salt Lake City, UT 84101 or e-mailed to *lscanlon@rideuta.com* by April 30, 2009.

Early scoping meetings to accept comments on the scope of the Alternatives Analysis will be held on the following dates:

- Tuesday, March 24th, 4 to 7 p.m., Ogden Eccles Conference Center (ground floor-small ballroom), 2415 Washington Blvd. in Ogden.
- Thursday, March 26th, 11 a.m. to 1 p.m., Weber State University Student Union Bldg (second level-main auditorium), 1217 University Circle in Ogden.

Scoping materials for these meeting will be provided at the meeting sites and are available on UTA's Web site at *http://rideuta.com.* Scoping materials include the draft purpose and need for the project and the initial set of alternatives proposed for study. The buildings and facilities used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in scoping should contact Elizabeth Scanlon, UTA at 801–236–4706 or *lscanlon@rideuta.com.* Hard copies of the scoping materials are also available.

An interagency scoping meeting will be held on Tuesday, April 21st from 3:30 to 4:30 p.m. at Weber Center, 2380 Washington Blvd, Suite 359 in Ogden. Representatives of Native American tribal governments and of all Federal, State and local agencies that may have an interest in any aspect of the project will be invited.

In addition to the early scoping meetings, additional agency and public scoping meetings may be required under NEPA if the Preferred Alternative is determined to potentially have significant environmental impacts and an EIS is required. The dates and locations for EIS scoping meetings would be included in a Notice of Intent (NOI) to prepare an EIS and would be advertised in the same manner as this Early Scoping Notice.

ADDRESSES: Written comments on this Early Scoping Notice should be mailed to Ogden/WSU Transit Corridor Project, c/o Elizabeth Scanlon, UTA, 669 West 200 South, Salt Lake City, UT 84101 or e-mailed to *lscanlon@rideuta.com.* UTA also accepts written comments through its Web site at *http://rideuta.com.*

FOR FURTHER INFORMATION CONTACT: Utah Transit Authority—*lscanlon@rideuta.com.*

Federal Transit Administration—*david.beckhouse@dot.gov.*

SUPPLEMENTARY INFORMATION:

Early Scoping

The FTA and UTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of the Ogden-Weber State University Transit Corridor Alternatives Analysis, including the purpose and need for transit improvements in the corridor, the alternatives to be considered, and the types of impacts to be evaluated. Comments at this time should focus on the purpose and need for transit improvements in the corridor; alternatives that may be less costly or have less environmental impact while achieving similar transportation objectives; and, the identification of any significant social, economic, or environmental issues that should be considered in developing the alternatives. Early scoping is an optional element of the National Environmental Policy Act (NEPA) process that is particularly useful in situations where, as here, a proposed action (the locally preferred alternative) has not been identified and alternative modes and major alignment variations are under consideration in a broadly-defined corridor.

Purpose and Need for Action

The purpose of the Ogden-Weber State University Transit Corridor Project is to provide high-quality transit service that:

(1) Improves the level of service and transit ridership between the Ogden Intermodal Center, the Ogden Central Business District, Weber State University, and McKay-Dee Hospital;

(2) assists the City of Ogden in achieving vital economic and community development goals; and,

(3) is affordable, enjoys wide public support, and encourages local partnerships.

Alternatives

A range of alternatives is being considered including various transit technologies, corridor alignments, configurations and operations, station types and locations, and Transportation Systems Management (TSM) improvements. In addition to these various types of actions, the implications of a No-Action alternative will be considered in the analysis. The following summarizes the general types of alternatives to be considered in the

analysis, understanding that a variety of possible alternatives, and combinations thereof, will be initially identified and then undergo screening to define the alternatives for advancement to the environmental evaluation process. Further description of this process is provided below under FTA Procedures.

The initial set of transit modal alternatives to be evaluated in the Alternatives Analysis include:

—A streetcar alternative that features frequent rail service running primarily within local street rights-of-way, either in dedicated or shared lanes, with stations placed along the alignment to serve important origins/destinations and maintain competitive trip times for end-end users.

—A Bus Rapid Transit alternative that features low-floor bus vehicles providing fast, reliable and frequent service in both directions, using either dedicated or shared lanes serving stations along the alignment.

—Station alternatives, including terminus stations at both ends of the line, including a regional park and ride at/near WSU and a platform-platform connection with FrontRunner and other services at the Ogden Intermodal Center.

—An array of alignments providing the connections to the major markets to be served. These include a general alignment that begins at the Intermodal Center in downtown Ogden and then down to Washington Boulevard, turning east at 26th Street and then to Harrison Boulevard and south to Weber State University to approximately 46th Street. Other options include an alignment from the Intermodal Center and then to Washington Boulevard and continuing south to 30th Street or 36th Street, and then traveling east to Harrison Boulevard and south to 46th Street. (A map of the alignments is posted on *http://www.rideuta.com* under the ''Projects'' tab.). Other variations to these general alignments being considered would include entering the Weber State University campus roadway system and providing service directly to the McKay-Dee Hospital. Determining whether the Bus Rapid Transit or Streetcar alignments and stations would operate in their own lanes or in shared lanes will be decided, and if they would be in a protected median in the center of a roadway or running along the side of a roadway.

—*Future No-Action Alternative.* The study will consider the transportation and environmental effects if no new major transit investments are implemented in this corridor. This alternative will include the highway and transit projects in the current Wasatch Front Regional Council Transportation Plan Update 2007–2030.

—*Transportation System Management (TSM) Alternative*—The study will consider the effects of modest improvements in the highway and transit systems beyond those in the Future No-Action Alternative. The TSM Alternative would evaluate low-cost enhancements to the Future No-Action Alternative and would emphasize transportation system upgrades such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, more frequent bus service, and other transit service improvements that do not require major capital investments.

In addition to the alternatives described above, other reasonable alternatives identified through the early scoping process will be considered for potential inclusion in the planning Alternatives Analysis, with reasonable meaning the technology is proven and currently implemented.

FTA Procedures

UTA may seek Small Starts funding for the proposed project under 49 U.S.C. Sec. 5309 and will, therefore, be subject to Smalls Starts regulation (49 Code of Federal Regulations [CFR] part 611). The Small Starts regulations require a planning Alternatives Analysis that leads to the selection of a Locally Preferred Alternative by UTA and its partners, and the inclusion of the locally preferred alternative in the long-range transportation plan adopted by the Wasatch Front Regional Council. The planning Alternatives Analysis will examine alignments, technologies, station locations, costs, funding, ridership, economic development, land use, engineering feasibility, and environmental factors in the corridor. The Small Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering. After the identification of a proposed action at the conclusion of the planning Alternatives Analysis, the appropriate NEPA documentation shall be determined by the FTA. If preparation of an Environmental Impact Statement is warranted, a NOI will be published in the **Federal Register** and the scoping of the EIS will be completed by soliciting and considering comments on the purpose and need for the proposed action, the range of alternatives to be considered in the EIS, and the potentially significant environmental and community impacts to be evaluated in the EIS.

A plan for coordinating public and agency participation in the environmental review process and for commenting on the issues under consideration at various milestones of the process will be prepared and posted on the UTA Web site at *http://www.rideuta.com* (under the ''Projects'' tab).

Issued on: March 2, 2009.

Terry J. Rosapep,

Regional Administrator.

[FR Doc. E9–4996 Filed 3–9–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–124069–02, REG–118966–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–124069–02, Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; and existing final regulation, REG–118966–97, Information reporting with Respect to Certain Foreign Partnerships and Certain Foreign Corporations.

DATES: Written comments should be received on or before May 11, 2009.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 6038—Returns Required with Respect to Controlled Foreign Partnerships, and Information reporting with Respect to Certain Foreign

Partnerships and Certain Foreign Corporations.

OMB Number: 1545–1617. Regulation Project Number: REG–124069–02, REG–118966–97.

Abstract: REG–124069–02: Treasury Regulation 1.6038–3 requires certain United States person who own interests in controlled foreign partnerships to annually report information to the IRS on Form 8865. This regulation amends the reporting rules under Treasury Regulation section 1.6038-e to provide that a U.S. person must follow the filing requirements that are specified in the instructions for Form 8865 when the U.S. person must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065–B. *REG–118966–97:* Section 6038 requires certain U.S. persons who own interest in controlled foreign partnerships or certain foreign corporations to annually report information to the IRS. This regulation provides reporting rules to identify foreign partnerships and foreign corporations which are controlled by U.S. persons.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions and individuals or households.

Estimated Number of Respondents: 600.

Estimated Total Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–4957 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–139768–02]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–139768–02 (TD 9134), Excise Tax Relating to Structured Settlement Factoring Transactions.

DATES: Written comments should be received on or before May 11, 2009.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Structured Settlement Factoring Transactions.

OMB Number: 1545–1824.

Regulation Project Number: REG–139768–02.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the 40 percent excise tax imposed by section 5891 of the Internal Revenue Code with respect to acquiring of structured payment rights.

Current Actions: This regulation has gone final.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 4.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 2.

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–4966 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–122917–02]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–122917–02, Statutory Options.

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statutory Options.

OMB Number: 1545–0820.

Regulation Project Number: REG–122917–02.

Abstract: The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise of a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Burden Hours: 16,650.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–4967 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8725

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8725, Excise Tax on Greenmail.

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Greenmail.

OMB Number: 1545–1086.

Form Number: 8725.

Abstract: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the Form 8725 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Response: 7 hours, 40 minutes.

Estimated Total Annual Burden Hours: 92.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

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

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–4968 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8881

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8881, Credit for Small Employer Pension Plan Startup Costs.

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Small Employer Pension Plan Startup Costs.

OMB Number: 1545–1810.

Form Number: 8881.

Abstract: Qualified small employers use Form 8881 to request a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 66,667.

Estimated Time per Respondent: 7 hours, 54 minutes.

Estimated Total Annual Burden Hours: 526,670.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9–4969 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–01, Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes, reporting Requirements under § 170(f)(12)(D).

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes, reporting Requirements under § 170(f)(12)(D).

OMB Number: 1545–1980.

Notice Number: Notice 2006–01.

Abstract: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Service. The purpose of is to prevent donors from taking inappropriate deductions.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, Individuals or Households.

Estimated Number of Respondents: 4,300.

Estimated Average Time per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 21,500.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9–4999 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedures 2006–09 and 2008–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedures 2006–09 and 2008–31, Allocation of Income and Deductions Among Taxpayers.

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocations of Income and Deductions Among Taxpayers.

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedures 2006–09, and 2008–31.

Abstract: The information requested in these revenue procedures is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications, to process such applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time per Respondent: 32 hours, 49 minutes.

Estimated Total Annual Burden Hours: 5,250.

The following paragraph applies to all the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5000 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (Gaming Industry).

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545–1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code Section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 43 hours, 40 minutes.

Estimated Total Annual Burden Hours: 4,367.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5002 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8902

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8902, Alternative Tax on Qualifying Shipping Activities.

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alternative Tax on Qualified Shipping Activities.

OMB Number: 1545–1968.

Form Number: Form 8902.

Abstract: Form 8902 is used to elect the alternative tax on national income from qualifying shipping activities and to figure the alternative tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 15 hr., 17 min.

Estimated Total Annual Burden Hours: 3,056.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9–5003 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–113572–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–113572–99, (TD 8933), Qualified Transportation Fringe Benefits (§ 1.132–9(b)).

DATES: Written comments should be received on or before May 11, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Transportation Fringe Benefits.

OMB Number: 1545–1676.

Regulation Project Number: REG–113572–99.

Abstract: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, and not-for-profit institutions.

The burden is reflected in the burden for Form W–2.

Estimated Total Annual Recordkeeping Burden: 7,020,000.

Estimated Average Annual Recordkeeping Burden per Recordkeeper: The average annual recordkeeping burden will vary depending on the size of the employer.

Estimated Average Annual Recordkeeping Burden per Recordkeeper: 26.5 hours.

Estimated Number of Recordkeepers: 265,343.

Estimated Total Annual Reporting Burden: 5,948,728 hours.

Estimated Average Annual Reporting Burden per Respondent: 8 hours.

Estimated Number of Respondents: 7,264,970.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5004 Filed 3–9–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 10, 2009

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 Louisiana Black Bear (Ursus americanus luteolus); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0047; 92210–1117–0000–B4]

RIN 1018–AV52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Louisiana Black Bear (Ursus americanus luteolus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Louisiana black bear (*Ursus americanus luteolus*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,195,821 acres (483,932 hectares) in Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Iberia, Iberville, Madison, Pointe Coupee, Richland, St. Martin, St. Mary, Tensas, West Carroll, and West Feliciana Parishes, Louisiana, fall within the boundaries of the critical habitat designation.

DATES: This rule becomes effective on April 9, 2009.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/lafayette.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Lafayette Ecological Services Field Office, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506; telephone 337–291–3100; facsimile 337–291–3139.

FOR FURTHER INFORMATION CONTACT: Jim Boggs, Field Supervisor, Lafayette Ecological Services Field 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 development and designation of critical habitat for the Louisiana black bear in this final rule. For more information on the biology and ecology of the Louisiana black bear, refer to the final listing rule published in the **Federal Register** on January 7, 1992 (57 FR 588), and to our 1995 final recovery plan, which is available from the Lafayette Ecological Services Field Office (see **ADDRESSES** section). For information on Louisiana black bear critical habitat, refer to the proposed rule to designate critical habitat for the Louisiana black bear published in the **Federal Register** on May 6, 2008 (73 FR 25354). Information on the associated draft economic analysis for the proposed rule to designate revised critical habitat was published in the **Federal Register** on November 12, 2008 (73 FR 66831).

Previous Federal Actions

We listed the Louisiana black bear (*Ursus americanus luteolus*) as threatened under the Act (16 U.S.C. 1531 *et seq.*) on January 7, 1992 (57 FR 588). In our final rule listing this subspecies, we determined that normal forest management activities supporting a sustained yield of timber products and wildlife habitats were compatible with Louisiana black bear's needs. Accordingly, we promulgated a special rule under section 4(d) of the Act, which can be found at 50 CFR 17.40(i), exempting the effects incidental to normal forest management activities within the subspecies' historic range, except for activities causing damage to or loss of den trees, den tree sites, or candidate den trees (57 FR 588). For the purposes of that exemption, normal forest management activities are those activities that support a sustained yield of timber products and wildlife habitats, thereby maintaining forestland conditions in occupied (i.e., breeding) habitat. Research has supported this decision. In fact, in some cases, such as leaving downed tree tops and creating openings, timber management can provide or enhance black bear habitat (Weaver 1999, pp. 126–128; Hightower *et al.* 2002, p. 14; Weaver *et al.* 1990, p. 344; Lindsey and Meslow 1977, p. 424). Therefore, we have not considered changing the special rule at 50 CFR 17.40.

We first proposed critical habitat for the Louisiana black bear on December 2, 1993 (58 FR 63560), but never published a final rule designating critical habitat. On September 6, 2005, Mr. Harold Schoeffler and the Louisiana Crawfish Producers Association—West filed suit in U.S. District Court for the Western District of Louisiana (Civil Action No. CV05–1573 (W.D. La.)) regarding our failure to designate critical habitat for the Louisiana black bear.

On June 26, 2007, the Court ordered the Service to withdraw the December 2, 1993, proposed critical habitat rule and create a new proposed critical habitat designation by no later than 4 months from the date of the judgment and to publish a final designation by no later than 8 months from the date of the proposed or new rule. On September 5, 2007, following a settlement agreement, the Court revised its order to require the Service to: (1) Withdraw the December 2, 1993, proposed rule and submit a new prudency determination and, if prudent, a new proposed critical habitat designation to the **Federal Register** by April 26, 2008; and (2) submit a final critical habitat determination, if prudent, to the **Federal Register** by February 26, 2009.

On May 6, 2008, we proposed critical habitat designation for the Louisiana black bear in Avoyelles, Catahoula, Concordia, East Carroll, Franklin, Iberia, Iberville, Madison, Pointe Coupee, Richland, St. Martin, St. Mary, Tensas, West Carroll, and West Feliciana Parishes, Louisiana (73 FR 25354). Simultaneously, we announced our withdrawal of the 1993 proposal and our new prudency determination. The proposed rule described three units totaling approximately 1,330,000 acres (ac) (538,894 hectares (ha)) within Louisiana.

For more information on previous Federal actions concerning the Louisiana black bear, refer to the final rule listing this subspecies as threatened published in the **Federal Register** on January 7, 1992 (57 FR 588), and the proposed critical habitat rule published in the **Federal Register** on December 2, 1993 (58 FR 63560).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Louisiana black bear during two comment periods. The first comment period associated with the publication of the proposed rule (73 FR 25354) opened on May 6, 2008, and closed on July 7, 2008. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened November 12, 2008, and closed on December 12, 2008 (73 FR 66831). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these two comment periods.

During the first comment period, we received 12 comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 15 comment letters addressing the proposed critical habitat designation or

the draft economic analysis. All substantive information provided during both comment periods has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that includes familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Louisiana black bear. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer questioned the permanency of perpetual easements purchased through the Wetland Reserve Program (WRP) and the process by which such easements could be terminated.

Our Response: According to the WRP Manual, found in Title II (Conservation) of The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill; Public Law 107–171), prior to making a decision regarding easement termination, the Natural Resources Conservation Service (NRCS) must: (1) Consult with the Service; (2) investigate whether reasonable alternatives to the proposed action exist; and (3) determine whether the easement modification is appropriate considering the purposes of WRP and the facts surrounding the request for easement modification or termination. Any WRP easement modification, including termination, must: (1) Be approved by the Director of the NRCS in consultation with the Service (the National WRP Program Manager must coordinate the consultation with the Service at the national level); (2) not adversely affect the wetland functions and values for which the easement was acquired; (3) result in equal or greater ecological (and economic) values to the U.S. Government; (4) further the purposes of the program and address a compelling public need; and (5) comply with applicable Federal requirements, including the Act, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), Executive Order 11990 (Protection of Wetlands), and related requirements. At least 90 days before taking any action to terminate an easement, the Secretary of the Department of Agriculture must provide written notice of such action to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. Therefore, based on our assessment of these requirements, the termination of a WRP easement appears highly improbable.

In addition, our Lafayette Ecological Services Field Office has partnered with NRCS to administer WRP in Louisiana since the inception of that program in 1992. Following a comprehensive review of our local files, and a search of national WRP records, we have been unable to find a single instance of a WRP easement being terminated in the history of that program (which includes nearly 10,000 projects on approximately 2 million ac (800,000 ha) of land nationwide).

(2) *Comment:* One peer reviewer expressed concern about the potential future conversion of non-WRP forestland to agricultural uses.

Our Response: Results of recent studies indicate that there has been a reversal in the pre-1980s trend of forest conversion to agricultural use in the Lower Mississippi River Alluvial Valley (LMAV). Documentation of that reversal is limited, however, and a clear understanding of the magnitude of afforestation to date has been difficult because of the lack of collated data (Schoenholtz *et al.* 2001, p. 603). Nonetheless, available data indicates that over the past three decades, forest restoration in the LMAV portions of Louisiana, Mississippi, and Arkansas has increased dramatically, and has led to a significant removal of land from agricultural production for the purpose of hardwood forest establishment (Gardiner and Oliver 2005, p. 243). For example, in the LMAV region of Mississippi, the total forested area increased by 11 percent between 1987 and 1994, and reforestation of former agricultural lands accounted for nearly 40 percent of that increase (King and Keeland 1999, p. 352). Between 1993 and 2007, over 140,000 ac (57,000 ha) were restored to forestland via WRP, and 200,000 ac (81,000 ha) via the Conservation Reserve Program, within Louisiana black bear habitat priority areas in Louisiana (Ginger *et al.* 2007, p. 41). In summary, there is no evidence that any significant amount of forestland will be converted to agriculture in the future, and to the contrary, there is a promising trend in the annual increase of bottomland hardwood forest (BLH) forestation across the LMAV (Schoenholtz *et al.* 2001, p. 612).

(3) *Comment:* One peer reviewer questioned whether bottomland hardwoods designated as critical habitat would be considered jurisdictional wetlands which would require permit authorization under section 404 of the Clean Water Act prior to filling for developmental, agricultural, or other purposes. That reviewer also inquired about habitat losses and associated impacts to bears should section 404 permits authorize the loss of forested wetlands within the critical habitat boundary.

Our Response: The U.S. Army Corps of Engineers (Corps) has been delegated the authority to regulate the placement of fill in wetlands and other waters of the United States. Wetland determination for regulatory purposes, such as assessments of wetland losses incurred from section 404-permitted activities, is typically done on a project-specific basis by Corps personnel. Although regional large-scale wetland determination maps have not been typically used or developed by the Corps for jurisdictional purposes, based on our knowledge of forested ecosystems in the LMAV, we believe that most bottomland hardwoods within the critical habitat boundary are jurisdictional wetlands. Because the Corps evaluates permit applications on an individual basis, it would not be possible to determine whether the Corps would issue permits and if, or to what extent, they would be modified to minimize impacts or to accurately assess the full extent of future wetland losses from permitted projects. Given the nature and extent of previously permitted activities in bottomland hardwood wetlands within this region, we do not anticipate significant habitat losses from section 404-permitted projects. Furthermore, the Corps requires that section 404 permittees provide compensatory mitigation to replace wetland functions and values that are lost via their respective projects. Compensatory mitigation area virtually always equals or exceeds impacted area and is accomplished within, or in proximity to, the watershed of the impact site. Such mitigation, although done strictly for wetland replacement, would also provide habitat benefits for bears and should exceed habitat losses experienced from permitted projects.

(4) *Comment:* One peer reviewer stated that we have not been able to

document female interchange between the Deltic Timber tracts and the Tensas River National Wildlife Refuge (TRNWR). Therefore, those populations currently function as separate populations and should be described as such.

Our Response: After reevaluating all available information related to bear populations and interchange between the Deltic Timber tracts and the TRNWR, we agree with this statement and have considered this in our analysis. It is more correct to state that the relationship between those populations ''may soon begin,'' rather than ''have likely begun,'' to function as a single population.

(5) *Comment:* One peer reviewer requested that we provide a more detailed description of the process used to approximate female bear home ranges for our breeding habitat delineation.

Our Response: Female bear home ranges were determined on a population-specific basis using published, telemetry-based research (Anderson 1997, p. 37; Beausoleil 1999, p. 60; Marchinton 1995, p. 31; Wagner 1995, p. 12; Weaver 1999, p. 70). The average home range sizes that were calculated as minimum convex polygons for each population were converted to average home range radii. Female locations (determined from telemetry data collected for the above-referenced studies) were buffered with those population-specific home range radii using a geographic information system software package to establish an approximate breeding habitat boundary. Minor modifications to that boundary were made based on the availability of contiguous habitat and the presence of movement barriers (such as large expanses of agricultural land or poor-quality habitat, waterways, highways, urban development, and other major landscape features).

(6) *Comment:* One peer reviewer stated that the estimate of minimum habitat size for black bears presented by Cox *et al.* (1994, p. 50) is probably too large for Louisiana black bears due to higher habitat quality and more agricultural crop availability for many Louisiana black bear populations.

Our Response: We concur with this statement and did not intend to suggest that the Cox *et al.* (1994) estimate would be used as a basis for our habitat requirements assessment. We used known home range sizes and habitat requirements for Louisiana black bears, on a population-specific basis (with emphasis on the TRNWR population as a stable population that relies mostly on habitat containing features as described by the primary constituent elements (PCE) for survival), to determine the minimum required habitat size. Our mention of the Cox *et al.* (1994) publication was only intended to present other research findings related to minimum habitat requirements for black bears. Consistent with this reviewer's comment, our minimum habitat size calculation, as described in our May 6, 2008, proposed rule (73 FR 25354, p. 25364), yielded an estimate that is significantly smaller than that of Cox *et al.* (1994).

(7) *Comment:* One peer reviewer commented on the potential value of smaller habitat fragments within larger habitat matrices, and whether those smaller forested tracts should be designated as critical habitat for the Louisiana black bear.

Our Response: We concur that smaller habitat patches provide benefits for bears, particularly to facilitate movement through corridors between populations, when they are components of a larger habitat matrix. Based on our review of available scientific literature, we determined that habitat fragments as small as 12 ac (5 ha) may be sufficient to provide linkage and facilitate movement across a fragmented landscape (Pelton and Van Manen 1997, p. 33; Beausoleil *et al.* 2005, pp. 409–410). For that reason, we included ''corridors consisting of habitat patches 12 ac (5 ha) or greater in size'' in our May 6, 2008, proposed rule to designate critical habitat for the Louisiana black bear (73 FR 25354, p. 25363).

(8) *Comment:* One peer reviewer requested clarification of our definition of an ''actual den tree.''

Our Response: Specific language affording protection of actual den trees was included in the 1992 4(d) rule that was part of the listing of the Louisiana black bear as a threatened subspecies (57 FR 588, p. 593). That rule did not, however, define the criteria to be used for determining whether a tree is an ''actual den tree.'' We interpret that regulatory language to extend protection to den trees as long as bear usage is determinable (i.e., it is recognizable by visual observation of the subject tree, or was known to be used in previous denning seasons), such that those trees are protected even when bears are not actively using them. We determine bear use of a den tree by visual or audible confirmation (if it is actively being used), telemetry data, and the presence of bear claw marks.

(9) *Comment:* One peer reviewer questioned the portion of our critical habitat designation strategy that involves maintaining the viability of existing populations, stating that he does not believe that existing populations have been proven viable.

Our Response: We concur that existing populations have not been proven to have long-term (*i.e.* , 100 years or more) viability. All known breeding populations of Louisiana black bears that were present at the time of listing, however, continue to exist more than 15 years later. Population estimates for Louisiana black bears at the time of listing appear to be lower than what recent research would indicate, and there is circumstantial evidence that the population is growing (LDWF 2007, p. 22). Therefore, we consider these populations to be viable (at least in the near term) for planning purposes related to habitat restoration and corridor establishment.

(10) *Comment:* One peer reviewer questioned the application of habitat requirements for the TRNWR subgroup, which benefits from extensive access to adjacent agricultural fields, to the Upper and Lower Atchafalaya River Basin (ARB) (Critical Habitat Units 2 and 3) populations, which have less opportunity to forage on agricultural crops. He asserted that due to agricultural crop availability and use by the TRNWR subgroup, a greater land base may be necessary for the two ARB populations to compensate for the lack of available agriculture.

Our Response: We agree that the TRNWR subgroup is situated in an area that provides greater access to agricultural crops with higher nutritional value (e.g., corn, wheat, and soybeans) than the crops that are available for the two ARB populations. The Deltic Timber area in the northern portion of the Tensas River Basin (Critical Habitat Unit 1) is a highly fragmented system of isolated forested tracts interspersed within an expansive agricultural landscape. Agricultural crops used by bears in this area is well documented and occurs at greater rates than for any other subgroup or population of Louisiana black bears. It should be noted, however, that even within this TRNWR subgroup, agricultural crops used by bears varies greatly by season and natural foods comprise most of the diet (by volume) for half of the year (Anderson 1997, p. 53). We believe that bears in both ARB populations also have access to, and will forage on, agricultural crops in their vicinity. Because sugarcane is the most commonly grown crop in this region, bears in these populations likely benefit less from the use of adjacent agriculture than bears in the TRNWR subgroup. Accordingly, we incorporated more PCE-definitional habitat into our critical habitat boundary (423,170 ac (171,251

ha) total for Units 2 and 3) for the two ARB populations than is currently inhabited by bears in the TRNWR subgroup (141,868 ac (57, 412 ha)). As explained in our proposal to designate critical habitat (73 FR 25354, pp. 25364–25365), because the TRNWR subgroup sustains itself throughout much of the year primarily on habitats containing the PCEs, and that subgroup is viable, based on the results of population viability analyses, that subgroup was used as a model to evaluate the minimum habitat requirements for maintenance of long-term population viability.

(11) *Comment:* One peer reviewer stated that the shared boundary (i.e., the corridor) between Units 2 and 3 seems relatively constricted and may not be adequate to ensure long-term connectivity and dispersal across those two units.

Our Response: We have reassessed the landscape along the southern boundary of Unit 2 and the northern boundary of Unit 3 relative to potential travel corridors for bears. As explained in the Methods section of this document, increasing the unit width in this region would incorporate primarily agricultural fields and urban development, and virtually no additional forested habitat. Accordingly, the shared boundary of these two units has not been modified from our original proposal.

(12) *Comment:* One peer reviewer had several questions regarding the use of the terms ''occupied at time of listing'' and ''currently occupied'' and the basis for critical habitat designation only in habitat that was occupied at the time of listing. Also, one public commenter expressed similar concerns.

Our Response: Louisiana black bear resource managers have commonly used the term ''occupied'' habitat to indicate areas with physical evidence of reproduction (e.g., young, females with young, or lactating females). Critical habitat is defined in section 3 of the Act in part as the specific areas within the geographical area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features: (I) Essential to the conservation of the species and (II) which may require special management considerations or protection. Therefore, for critical habitat designation, we use the term ''occupied'' in a less restrictive sense to indicate the subspecies' presence in an area without regard to reproductive information (i.e., the transient or permanent presence of male or female bears). In order to avoid confusion, we use the term ''breeding areas'' or ''breeding habitat'' in this document to refer to areas with physical evidence of reproduction. We inadvertently used the term ''currently occupied'' once in the proposal when we should have used the term ''current breeding habitat.'' We have noted this error and revised our text.

Under the Act and its implementing regulations (50 CFR 424.12(e)), we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when (1) the inclusion of specific areas occupied at the time of listing defined by the essential physical and biological features are not sufficient to conserve the species and (2) we determine that those areas outside the geographical area occupied by the species are essential for the conservation of the species. In preparing this final critical habitat designation, we did not find any areas outside of the geographical area occupied by the Louisiana black bear at the time of listing that are essential for the conservation of the subspecies, and we believe the specific areas included in this designation are sufficient to conserve the subspecies; therefore, we are not designating areas outside of the geographical area occupied by the subspecies.

(13) *Comment:* One peer reviewer stated that coastal habitat is not superior habitat but that the small number of data points and bear use of garbage for food may have affected those estimates.

Our Response: That statement referenced a speculation made by researchers over 10 years ago (Wagner 1995, p. 25). We agree that the knowledge we have gained about the coastal population indicates the commenter is correct, and we have included that in our discussion.

(14) *Comment:* One peer reviewer requested additional information on how we will evaluate the cumulative effects of critical habitat alteration.

Our Response: 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 of the Act requires consultation on Federal actions that may affect critical habitat. Under section 7 of the Act, the Federal action agency must provide an analysis of cumulative effects, along with other information, when requesting formal consultation. The Service is required to consider cumulative effects of a proposed action in formulating our biological opinion. Under the 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 primary constituent elements to be functionally established) to serve its intended conservation role for the species.

(15) *Comment:* One peer reviewer stated that, through the coordinated efforts of Federal, State, and private groups, remarkable progress in the protection and restoration of black bear habitat has been achieved in Louisiana in the past 10 years and was achieved without the benefit of critical habitat designation. The commenter wished to congratulate all those involved.

Our Response: We agree that the progress made in Louisiana black bear habitat protection and restoration is noteworthy. We estimate that about 600,000 ac (240,000 ha) of land have been restored or protected in the bear's range since it was listed in January 1992. This includes lands that have been purchased by State and Federal agencies, public and private lands protected from development, and privately owned lands where bear habitat has been restored. All this was accomplished through the voluntary participation of many partners, such as the NRCS and other Federal agencies, State agencies in Louisiana and Mississippi, the Black Bear Conservation Committee (BBCC), the Louisiana Forestry Association, universities, and private citizens. We believe that designation of critical habitat will provide benefits in addition to those provided through private landowner incentive and conservation programs, and will further conservation of this subspecies.

(16) *Comment:* Two peer reviewers stated that critical habitat designation has the potential to diminish landowner support for conservation activities benefitting the Louisiana black bear. One suggested that we precede critical habitat designation with a public education campaign.

Our Response: We agree that negative perceptions associated with critical habitat designations could potentially alienate the private landowners that have been, and continue to be, so vital in the Louisiana black bear recovery. As we discuss in the ''State Comments'' section and in the ''Benefits of Inclusion'' section of this rule, we continue to recognize that designating critical habitat in areas where we have partnerships with private landowners that have led to conservation or management of listed species may impact landowners and future partnerships and conservation efforts.

Therefore, we have excluded private lands enrolled in the WRP under permanent conservation easements from critical habitat designation. Furthermore, lands that currently do not contain the physical and biological features essential to the conservation of the Louisiana black bear do not meet the definition of critical habitat and are not designated as critical habitat, nor would they be considered to be such if they were restored, or allowed to naturally regenerate, to forested habitat subsequent to this designation.

We also agree that public education regarding critical habitat is important. From the beginning of this designation process, we have made efforts to inform the public (landowners and public agencies) about critical habitat and the designation process through newspapers, fact sheets, and informal meetings. We are committed to continuing public education about the Louisiana black bear and its critical habitat.

(17) *Comment:* Two reviewers stated that our approach was logical and reasonable. One commenter indicated that we had thoroughly reviewed and appropriately interpreted the most recent scientific literature. One commenter indicated that we had designated sufficient quantity and quality in a way that encompassed all breeding populations and all primary constituent elements.

Our Response: We appreciate the peer reviewers' positive evaluation of the biological and scientific basis for our critical habitat determination.

(18) *Comment:* One commenter provided suggestions on the consistent use of terms, citations, and other grammatical inconsistencies.

Our Response: We have made those corrections where appropriate and necessary in this designation.

(19) *Comment:* One peer reviewer stated that he did not consider a density of one bear per 686 ac (278 ha) as low (even in the southeastern United States) and that, while this density is low when compared to densities on the nearby Deltic lands, it was more likely slightly higher than average across the Southeast.

Our Response: We agree and have made this correction.

(20) *Comment:* One peer reviewer requested clarification on the methods we would use to determine the presence of a breeding population in Mississippi.

Our Response: There have been only three documented occurrences of successful reproduction of Louisiana black bears in Mississippi (Ginger *et al.* 2007, p. 34); there is no overlap in the home ranges of the three female bears that produced those litters. Based on our analysis of over 15 years of Louisiana black bear research and telemetry data, we have concluded that an isolated female bear (though she may occasionally produce a litter of cubs) does not constitute a breeding population. We have determined that a breeding population must consist of at least five adult females that are known to have successfully reproduced and that have overlapping home ranges. Evaluation of existing telemetry data indicates that habitats used by fewer than five adult females serve as temporary residences during atypical patterns of dispersal (*i.e.*, movement patterns that are most often observed in bears translocated during reintroduction programs).

(21) *Comment:* One peer reviewer questioned why it might be desirable to exclude WRP lands enrolled under a permanent easement.

Our Response: Due to the level of protection from development afforded these lands, and the potential that negative perceptions associated with critical habitat designations could potentially alienate the private landowners that have been so vital to the Louisiana black bear recovery, we have determined that the benefits of exclusion outweigh the benefits of inclusion for lands enrolled under permanent easements in the WRP. In addition, we believe that this determination will not result in the extinction of the Louisiana black bear. Please refer to the ''Benefits of Exclusion'' section of this rule for further information.

Comments From States

Section 4(i) of the Act states ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulation consistent with the agency's comments or petition.'' Comments received from State agencies regarding the proposal to designate critical habitat for the Louisiana black bear are addressed below.

(22) *State Comment:* The Louisiana Department of Wildlife and Fisheries (LDWF) stated that critical habitat designation is not necessary for the successful restoration of the black bear in Louisiana.

Our Response: According to section 4(a)(3) of the Act, the Service is required to designate critical habitat for threatened and endangered species to the maximum extent prudent and determinable. Also, as a result of a lawsuit filed by Harold Schoeffler and Louisiana Crawfish Producers-West, we were ordered by the court to designate critical habitat, if prudent, for the Louisiana black bear. We have already determined that designation of critical habitat is prudent (May 6, 2008, 73 FR 25354). Therefore, we must designate critical habitat to fulfill those statutory and legal obligations.

(23) *State Comment:* The LDWF stated that critical habitat designation for the Louisiana black bear has the potential to alienate private landowners who have habitat upon which the bear depends. They furthermore indicated that a cooperative relationship is necessary with those landowners in order to collect data and accomplish habitat restoration needed for delisting.

Our Response: We agree with the LDWF that negative perceptions associated with critical habitat designations could potentially alienate the private landowners that have been and continue to be so vital to the Louisiana black bear recovery. We also recognize that the significant strides made in habitat restoration for this subspecies are in large part due to conservation actions taken by private landowners and will continue to be needed to conserve this subspecies. As we discuss in the ''Benefits of Inclusion'' section of this rule, we continue to recognize that designating critical habitat in areas where we have partnerships with private landowners that have led to conservation or management of listed species may impact landowners and future partnerships and conservation efforts. Therefore, we have excluded private lands enrolled under permanent conservation easements in the WRP from critical habitat designation. Furthermore, lands that currently do not contain features essential for the Louisiana black bear's conservation do not meet the definition of critical habitat and are not designated as critical habitat, nor would they be considered to be such if they were restored, or allowed to naturally regenerate, to forested habitat subsequent to this designation. We continue to be committed to working on habitat restoration with private landowners in the future. See our response to Comment 16 above.

(24) *State Comment:* The LDWF and several other commenters stated strong support for exempting lands enrolled in the NRCS' WRP program from critical habitat designation. They also requested that we consider exemptions for other Federal conservation assistance programs including the NRCS' Conservation Reserve Program (CRP), the Conservation Reserve Enhancement Program (CREP), and the Wildlife Habitat Incentive Program (WHIP).

Our Response: 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, based on this analysis, we make the determination that the benefits of exclusion outweigh the benefits of inclusion, then we can exclude the area only if such exclusion would not result in the extinction of the species.

In the case of lands enrolled under a permanent easement in the WRP, those easement restrictions provide substantial protection and management for the Louisiana black bear and its essential habitat features in contrast to the designation of critical habitat, which only precludes destruction or adverse modification. We have determined that the benefits of exclusion outweigh the benefits of inclusion for lands enrolled under permanent easements in the WRP. In addition, we believe that this determination will not result in the extinction of the Louisiana black bear. Please refer to the ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule, as well as responses to Comments 16 and 23, for further information.

We share the LDWF's concern and acknowledge the benefits that other private landowner incentive and conservation programs (i.e., CRP, CREP, WHIP) offer for the Louisiana black bear and other wildlife. However, landowners who enroll in those programs are not bound by an easement that permanently prohibits development or conversion of those lands. Instead, landowners sign an agreement (generally 10 to 15 years in duration) and at the end of that agreement those properties may be converted to another use. In those instances, the protection provided to those lands is not significantly different from that provided via critical habitat under section 7 of the Act (i.e., protection from adverse modification or destruction). Therefore, while we believe that excluding lands enrolled in those conservation agreements may provide benefits in terms of maintaining landowner cooperation, we have determined not to exclude them from this critical habitat designation.

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. We continue to be committed to working on habitat restoration with private landowners in the future.

(25) *State Comment:* The LDWF expressed agreement with the proposed critical habitat geographic boundaries. The LDWF also indicated that those boundaries are consistent with the most current LDWF telemetry, research, and habitat data. In addition, the agency stated that while bear sightings may occur throughout Louisiana, the proposed critical habitat protects the core breeding populations and the highest quality bear habitat.

Our Response: We appreciate the LDWF's positive evaluation of the biological and scientific basis for our critical habitat determination.

Public Comments

(26) *Comment:* One commenter stated that he believed the Louisiana black bear population to be between 500 and 700 bears.

Our Response: Current Louisiana black bear population estimates vary somewhat among the professional community, primarily due to the lack of a reliable and comprehensive estimate. We used every published population estimate available (Beausoliel 1999, p. 51; Boerson *et al.* 2003, p. 203; Pelton and Van Manen 1997, p. 38; Triant *et al.* 2004, p. 653) to support our estimated current population size of 400 to 700 bears. A more comprehensive population study is currently being conducted, but will not be finalized prior to the court-ordered deadline for publication of this critical habitat designation.

(27) *Comment:* One commenter stated that a map published by the BBCC in 2006 indicated that bears had been observed in virtually every Louisiana parish. That commenter also discussed potential critical habitat designation in specific areas based on anecdotal sighting information from locations throughout Louisiana and in portions of Arkansas and Mississippi.

Our Response: We acknowledge that bears have been observed throughout Louisiana and in portions of its neighboring States. Included in those sightings are confirmed Louisiana black bear occurrences in relatively major urban areas such as Abbeville, Bossier City, Crowley, Lafayette, and New Iberia. Current breeding habitat and corridors linking breeding areas were paramount in the delineation of this critical habitat designation. We do not have data to show that these specific bear sightings suggested by the commenter, in portions of Louisiana, Arkansas, and Mississippi, are part of a resident population, within current breeding habitat, or within a suitable travel corridor that would warrant designation as critical habitat. Therefore, we have not included these areas in our designation of critical habitat.

(28) *Comment:* One commenter briefly described the significance of corridors, expressed concern regarding our designation of corridors that only link existing populations, and stated that additional corridors in other areas should be considered. Several suggested potential corridors were described, including those that would link: (1) Felsenthal National Wildlife Refuge (NWR) in south Arkansas to the Upper Ouachita NWR in north Louisiana; (2) the Gulf of Mexico to the Town of Bogalusa in Louisiana, which would include the Pearl River and Old River Wildlife Management Areas (WMA) and the Bogue Chitto NWR; (3) Cat Island NWR and Tunica Hills WMA to St. Catherine Creek NWR in Mississippi; and (4) east-central Louisiana (i.e., Lasalle and Rapides Parish) to Texas via the Red River Alluvial Plain (incorporating various State WMAs and U.S. Forest Service parcels).

Our Response: We concur that corridors perform a significant role in the conservation of the Louisiana black bear. Accordingly, we have designated corridors between all known breeding populations of the Louisiana black bear. We also acknowledge that anecdotal Louisiana black bear sighting information exists for various locations throughout Louisiana and in portions of its neighboring States. As previously explained, such sightings are not always evidence of a resident population or of an important (or even suitable) travel corridor that would warrant designation as critical habitat. Accordingly, we do not believe that the designation of Felsenthal NWR and the Upper Ouachita NWR, including a corridor linkage, would further the conservation of the Louisiana black bear. Since 2000, over 100 bears (including both adult females and cubs) have been captured on White River NWR and neighboring lands and reintroduced to Felsenthal NWR. Those bears, however, are not considered Louisiana black bears; therefore, the regulations implementing the Act and associated critical habitat designations would not apply to that population or to Felsenthal NWR. There have been occasional bear sightings on the Upper Ouachita NWR, which have increased since the initiation of the Felsenthal NWR black bear reintroduction program (USFWS 2008,

pp. 48–50); however, we do not have any evidence of a breeding population on Upper Ouachita NWR. Consequently, we do not believe that there is justification to warrant designation of Felsenthal NWR (with a non-*U. a. luteolus* population), Upper Ouachita NWR (with no population), or a corridor linkage between those properties.

Although bear sightings are occasionally reported in the Pearl River Basin between the Gulf of Mexico to the Town of Bogalusa, there is no documented evidence of reproduction of Louisiana black bears occurring east of the Mississippi River in Louisiana. Very few bear studies have been conducted east of the Mississippi River in Louisiana due to the extremely low density of bears in this region. We are aware of just one such study, where only one confirmed bear occurrence was documented during a 5-month study involving 70 bait stations (Stinson 1996, p. 12). In addition to the Pearl River Basin not supporting a breeding population, it does not form a logical corridor between any known populations of Louisiana black bears. Accordingly, we have determined that this area does not contain the features essential to the conservation of the subspecies; therefore, it was not included within our critical habitat boundary.

Cat Island NWR and Tunica Hills WMA occur within, and St. Catherine Creek NWR occurs immediately north of, the Stinson (1996, p. 13) study area. As described above, that study confirmed speculations that this region supports very few bears. Louisiana black bear reproduction has not been documented on any of these lands, and establishing a corridor between them would serve little, if any, function for bear conservation. Therefore, we have determined that this area does not contain the features essential to the conservation of the subspecies, and it was not included within our critical habitat boundary.

Although occasional sightings are reported, there is no evidence that Louisiana black bears travel the Red River Alluvial Plain between east-central Louisiana (i.e., Lasalle and Rapides Parish) and Texas with any frequency. There is also no data to support classification of any areas within this region as Louisiana black bear breeding habitat.

In summary, as stated above, current breeding habitat was paramount in this delineation of critical habitat, and was based on known locations and home ranges of reproductive females. Corridors linking those core breeding areas were also designated based on the best available science (primarily telemetry studies) and extensive landscape-level habitat analyses which are described in the Methods section of our previous proposal May 6, 2008, (73 FR 25354, pp. 25359) and in this Final Rule.

(29) *Comment:* Several commenters suggested that we evaluate the effect of major highways on Louisiana black bear dispersal and habitat access. Specific reference was made regarding U.S. Highway 90 (Hwy. 90) in St. Mary Parish, Louisiana and U.S. Interstate 20 (I–20) in Madison Parish, Louisiana, and their apparent lack of permeability for bear movement.

Our Response: We concur that Hwy. 90 and I–20 are major obstacles to intra- and inter-population bear movement. Over the last several years, we have organized numerous site inspections and meetings involving biologists from both the National Wildlife Refuge System and the Ecological Services Divisions of the Service, the LDWF, the Louisiana Department of Transportation and Development, the Federal Highway Administration (FHWA), private environmental and engineering firms, and the BBCC to address issues with highway-associated impacts to bears. We have completed a biological opinion on the effects of a proposed upgrade of Hwy. 90 to interstate specifications on the Louisiana black bear, which included a conservation recommendation that the FHWA ''install large mammal/bear crossings at suitable locations along the subject reach of Hwy. 90.'' With the assistance of the BBCC, private corporations, and major local landowners, we are currently developing a large-scale habitat restoration and protection plan to address both habitat issues and highway-associated limitations on bear conservation in this region of the State. We have designed similar plans along I–20, most of which have been successfully implemented, primarily through the designation of a WRP Special Project Area. Although I–20 in Madison Parish has numerous large bridges over river and stream crossings that allow safe passage for bears, we have developed and implemented plans to further improve the permeability of that roadway for bears. The current critical habitat boundary crosses both of the subject roadways (in addition to many others), and we believe that it fully reflects our planning and conservation efforts and is consistent with these commenters' requests.

(30) *Comment:* One commenter stated that a single corridor or series of habitat linkages through the Mississippi River Delta and the ARB may not be adequate for Louisiana black bear conservation.

Our Response: We determined that designating all Louisiana black bear breeding habitat, including corridors that link those habitats, would be sufficient to ensure the conservation of this subspecies. Currently, all Louisiana black bear breeding populations occur along the Atchafalaya and Lower Mississippi River Alluvial Valleys, as reflected in our critical habitat boundary and delineation of corridors. We concur with this commenter's general position that a single habitat linkage would be insufficient for Louisiana black bear conservation purposes. For that reason, we delineated corridors to provide sufficient width to incorporate numerous potential travel and habitat linkages (e.g., small forested patches and riparian zones along streams, sloughs, and bayous) between each of the existing breeding populations.

(31) *Comment:* One commenter recommended modifications to the Louisiana Black Bear Recovery Plan including revisions to estimated population increases and home range sizes based on Taylor's (1971) estimate for the Upper ARB population. The commenter also suggested several specific changes to our critical habitat boundary in the context of that Plan.

Our Response: Louisiana black bear population and home range sizes were determined on a population-specific basis from the most recent available scientific studies (Anderson 1997, p. 37; Beausoliel 1999, pp. 51, 57, 60; Boerson *et al.* 2003, p. 203; Marchinton 1995, p. 31; Pelton and Van Manen 1997, p. 38; Triant *et al.* 2004, p. 653; Wagner 1995, p. 12; Weaver 1999, p. 70). We will consider recommended modifications to the Louisiana Black Bear Recovery Plan when it is updated. We assume that the commenter intends for us to address critical habitat suggestions in this final rule rather than in a revised recovery plan. Accordingly, recommendations related specifically to critical habitat are addressed throughout the Public Comments section of this document.

(32) *Comment:* Two commenters expressed concern about the effects of global climate change and resultant sea level rise on the long-term viability of the Lower ARB population and of the corridor that connects the Lower and Upper ARB populations of Louisiana black bear.

Our Response: Our critical habitat designation includes the hardwood forests on three south Louisiana salt domes (i.e., Avery Island, Weeks Island, and Belle Isle). The elevations of those domes far exceed the surrounding landscape, with a maximum elevation

found on Avery Island at 152 feet (ft) (46 meters (m)) above sea level. Within Critical Habitat Unit 3, we have also included hardwood forests that are flood-protected by levees and pumps to provide a suitable travel and habitat linkage to higher-elevation habitats to the north. Within this unit, we have designated a relatively large corridor that is, to the best of our mapping capabilities, comprised of habitat containing the PCEs. We used the best available science (described in detail in the Methods section of this document) to delineate that corridor in a manner that would facilitate bear movement between the Lower ARB and higher-elevation habitats of the Upper ARB population. We will continue our negotiations with the Louisiana Department of Transportation and Development (LDOTD) and FHWA regarding highway crossings for bears on Hwy. 90 along the subject corridor (previously described in detail). We will also continue our participation in the development of a large-scale habitat restoration and protection plan to address both habitat issues and highway-associated limitations on bear conservation in the Lower ARB, which will ensure that the subject corridor can fully support dispersal from expanding bear populations and the northward migration of bears that may leave coastal habitats rendered unsuitable by sea level rise. We believe that delineating this critical habitat boundary to include higher-elevation salt dome forests, flood-protected forests, and a corridor that provides northward dispersal opportunities, in conjunction with our continued efforts to resolve highway-associated limitations to bear dispersal (including our participation in landscape-level habitat restoration and protection planning), is sufficient to address conservation challenges for the Louisiana black bear.

(33) *Comment:* One commenter recommended that we designate critical habitat in all areas that support breeding populations and that we include habitat linkages between those populations.

Our Response: We concur and appreciate this validation of our critical habitat designation strategy, which is to include all areas that contain features essential to the conservation of the Louisiana black bear. We have determined that such areas include breeding habitat with connecting corridors, and, in accordance with this recommendation, we have included all such areas in our designation.

(34) *Comment:* One commenter stated that we are proposing to designate critical habitat on too small a portion of the Louisiana black bear's present range and that we should be allowed to designate critical habitat beyond areas where the subspecies is currently secure.

Our Response: We are unsure what the commenter means by the term ''where populations are secure.'' However, 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 and biological features that are essential to the conservation of the species and that may require special management consideration or protection. Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when (1) the inclusion of specific areas occupied at the time of listing defined by the essential physical and biological features are not sufficient to conserve the species; and (2) we determine that those areas are essential for the conservation of the species.

As stated above, current breeding habitat was paramount in this designation, and was based on known locations and home ranges of reproductive females. We are also designating corridors linking those core breeding areas based on the best available science (primarily telemetry studies) and extensive landscape-level habitat analyses, which are described in the Methods section of our previous proposal (May 6, 2008, 73 FR 25354, pp. 25359) and in this final rule. We determined that those areas are sufficient for the conservation of this subspecies.

(35) *Comment:* One commenter recommended that we reconsider our reduction of the 1993 Louisiana black bear critical habitat determination and our exclusion of the eastern portion of the ARB.

Our Response: We withdrew our 1993 proposal to designate Louisiana black bear critical habitat (58 FR 63560) concurrently with the publication of our new proposal in 2008 (73 FR 25354). In that latter proposal, we explained that the withdrawal was not only to comply with a court order, but to consider the significant amount of new information available on this subspecies and its habitat since the initial proposal published over 15 years ago. At the time of the initial critical habitat proposal, the resultant boundary was based on information (both biological and geographical) that was limited and primarily unpublished and anecdotal in nature. The current critical habitat boundary is based on numerous published studies including those by Anderson (1997), Beausoliel (1999), Benson (2005), Boerson *et al.* (2003), Hightower *et al.* (2002), Marchinton (1995), Pelton and Van Manen (1997), Stinson (1996), Triant *et al.* (2004), Van Why (2003), Wagner (1995), and Weaver (1999). Those studies have provided new insight into Louisiana black bear biology and ecology that was not available for our 1993 proposal. Therefore, to use the 1993 critical habitat boundary as a basis for our current designation would not be incorporating the best available scientific and commercial information. Our current boundary includes portions, but not all, of the areas proposed in 1993; it also includes additional areas beyond those that were initially proposed. This is an entirely new designation, developed independently of the 1993 proposal, and it is based on sound scientific findings that were unavailable in 1993. We followed these same principles in our delineation of the boundary through the ARB. We also employed new elevation data and digital mapping technologies (described in detail in the ''Criteria Used to Designate Critical Habitat'' section of this document) to determine areas within the ARB that are most likely to facilitate bear movement between the Upper and Lower ARB populations. Our boundary through the ARB does not include all possible areas that a bear could travel. It includes lands that, based on recent scientific findings and the latest mapping technologies, contain the features essential for the conservation of the subspecies.

(36) *Comment:* One commenter recommended that we designate critical habitat in Mississippi, due to recently documented evidence of reproduction, and in Texas, due to reported sightings and the area's position within the historic range of the Louisiana black bear.

Our Response: As described in our response to Comment 20, we have determined that Mississippi does not support breeding populations of the Louisiana black bear. (The ''Criteria Used to Designate Critical Habitat'' section provides additional details regarding the classification of breeding habitat.)

We acknowledge that Louisiana black bear sightings have been reported throughout Louisiana and in portions of its neighboring States including eastern Texas. As previously explained, such sightings are not always evidence of a resident population or of an important (or even suitable) travel corridor that would warrant designation as critical habitat. Since its listing as a threatened subspecies in 1992, there has been no

documented evidence of Louisiana black bear reproduction in Texas.

(37) *Comment:* Two commenters specifically requested that lands 500 ft (152 m) from the top of the top bank of the Tensas River and lands within 1,000 ft (305 m) of the land-side toe of the Mississippi River mainline levees be excluded because of future maintenance requirements.

Our Response: The commenters did not provide sufficient information for us to evaluate the benefits of exclusion of those areas. Therefore, based on analysis, the protection provided to those lands is not significantly different from that provided via critical habitat under section 7 of the Act (i.e., protection from adverse modification or destruction). Therefore, we have not excluded those lands from critical habitat designation for the Louisiana black bear.

(38) *Comment:* Numerous commenters, including both private and governmental entities, expressed opposition to the designation of critical habitat for the Louisiana black bear. Another commenter stated that we had exaggerated potential habitat losses in making our decision. He also stated his belief that the designation of critical habitat for the Louisiana black bear was about compliance with the courts and control over land resources and not based on science or the needs of the bear. Other commenters questioned the need for critical habitat based on increased bear sightings and encounters.

Our Response: According to section 4(a)(3) of the Act, the Service is required to designate critical habitat for threatened and endangered species to the maximum extent prudent and determinable. As a result of a lawsuit filed by Harold Schoeffler and Louisiana Crawfish Producers—West, we were issued a September 5, 2007, order from the U.S. District Court for the Western District of Louisiana to: (1) Withdraw the December 2, 1993, proposed rule and submit a new prudency determination and, if prudent, a new proposed critical habitat designation to the **Federal Register** by April 26, 2008; and (2) submit a final critical habitat determination, if prudent, to the **Federal Register** by February 26, 2009. As set forth in the proposed rule, in fulfilling the Court's order, we found that critical habitat was prudent and determinable and that designation was prudent (73 FR 25354).

Furthermore, 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 represent 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.

In preparing this final critical habitat designation for the Louisiana black bear, we reviewed and considered comments from the public and peer reviewers on the May 6, 2008, proposed designation of critical habitat (73 FR 25354) and the November 12, 2008, draft economic analysis (73 FR 66831). We also reviewed the most recent data for land ownership and habitat types and reevaluated the information and data used in our previous proposal.

(39) *Comment:* One commenter pointed out that we listed WRP enrollment as 55,000 ac (22,000 ha) while over 219,459 ac (88,811 ha) of land in Louisiana have been enrolled in the WRP program.

Our Response: We agree that over 200,000 ac (81,000 ha) have been enrolled in the WRP program Statewide. The 55,000 ac (22,000 ha) we reference represent the approximate amount of land enrolled in the WRP within the proposed critical habitat boundary only.

(40) *Comment:* Two commenters expressed concern about potential changes to the current forestry exemption (provided in the final rule listing the Louisiana black bear as a threatened subspecies [57 FR 588]), and the impact on silvicultural activity resulting from Louisiana black bear critical habitat designation.

Our Response: We have not removed or modified the forestry exemption as written in the final rule listing the Louisiana black bear as a threatened subspecies (January 7, 1992, 57 FR 588). In our May 6, 2008, proposal to designate critical habitat, we specifically stated that research supports our conclusion that normal silviculture (i.e., timber management that is consistent with the Louisiana Recommended Forestry Best Management Practices) is compatible with Louisiana black bear management; therefore, we did not propose any changes to that special rule under section 4(d) of the Act (at 50 CFR 17.40[i]) as part of this critical habitat designation. It should also be noted that, consistent with that special rule, there have been no restrictions, nor have there been any consultations under the Act, involving silvicultural activity and potential impacts to Louisiana black bears in the 16 years that the subspecies has been listed.

(41) *Comment:* One commenter stated opposition to the exclusion of lands enrolled under a permanent conservation easement in the WRP for several reasons and stated that these lands should not be used as a justification to curtail critical habitat boundaries. That commenter stated that: (1) The proposal is not based on an honest balancing of the positive and negative, and the Service acted illegally because it never weighed the benefits of designation against the risks of designation; (2) the Service cannot use exclusions to undermine Congress' established purpose for designating critical habitat; (3) excluding WRPs via 16 U.S.C. 1532(b)(4) is not appropriate and case law would not support the outcome; (4) the Service presents little or no evidence to support its conclusion that critical habitat designation is a deterrent to WRP enrollment; (5) private landowners may not have voluntarily enrolled into WRP without possible regulatory restrictions; and (6) the Service failed to acknowledge that landowners receive an incentive, in the form of financial support from the Federal government, to enroll in this program. The commenter urged the Service to include privately owned land held in conservation easements in our critical habitat designation, as these lands are not afforded the same level of protection as lands within a critical habitat designation.

Our Response: We have conducted a review and evaluation of the benefits of inclusion and the benefits of exclusion of lands enrolled in permanent easement under the WRP as critical habitat for the Louisiana black bear. We also presented the economic benefits that landowners who enroll in this program receive (approximately $8,000 per ac ($3,200 per ha)) (Economic Analysis, 2008; Exhibit 2–1 and p. 4–3). Due to the benefit provided by the level of protection from development afforded these lands and the potential that negative perceptions associated with critical habitat designations could potentially alienate the private landowners that have been so vital to continuing Louisiana black bear recovery, we have determined that the benefits of exclusion outweigh the benefits of inclusion for lands enrolled under permanent easements in the

WRP. Please see section ''Benefits of Exclusion—Permanent Easement Wetland Reserve Program Lands'' for a more detailed discussion. Furthermore, we have determined that such exclusion would not result in the extinction of the Louisiana black bear. Please refer to the ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule for a more detailed discussion. We have not excluded any other lands under conservation easements.

(42) *Comment:* Several commenters expressed concern that critical habitat designation will require consultation for various landowner activities and that as a result of those consultations, landowner activities will be restricted and the Service will ultimately be determining what actions would be allowed.

Our Response: Only Federal activities that may affect the Louisiana black bear or its designated critical habitat require consultation under section 7 of the Act. Activities on State, Tribal, local, or private lands are subject to the section 7 consultation process only if they have a Federal nexus, such as activities requiring a Federal permit. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations. Please see ''Section 7 Consultation'' for a more detailed discussion.

(43) *Comment:* One commenter requested that the Service consider possible economic benefits resulting from the designation, specifically noting potential benefits resulting from flood control and wetland conservation.

Our Response: As discussed in section 1.3.3 of the draft economic analysis (DEA), 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. Where data are available to evaluate the ancillary benefits of critical habitat designation, the analysis may attempt to quantify these benefits (see section 1.3.3 of the DEA).

As noted in section 2.1 of the DEA, land use patterns in the areas proposed for critical habitat have been and continue to be shaped by Federal flood control programs in addition to local economic factors. Specifically, the DEA notes that there are substantial baseline factors that provide for conservation of wetlands and provide for flood control within the proposed critical habitat areas.

The DEA considers whether additional changes in land use and management, above and beyond baseline conditions, would occur as a result of designation. For example, the DEA considers whether the designation would result in modifications to oil and gas development activities in the context of U.S. Army Corps of Engineers' section 404 permitting activities (Chapter 3). These potential modifications include relocation of drill sites and directional drilling, both of which could reduce the impact of this land use on wetlands. However, the extent of wetland impact avoided (e.g., amount of area and time period), the nature of the avoided impacts, and the resultant benefits associated with wetland protection, including flood control benefits, cannot be forecast using best available information. In addition, there are no data or models that would allow development of a forecast of how designation will impact the frequency or severity of floods (i.e., how land uses will change as a result of the designation and how these changes would impact flood frequency or severity).

In the case of the Louisiana black bear, there have been no previous section 7 consultations under the Act related to flood control activities. In addition, as discussed in section 2.4 of the DEA, it is possible that participation in voluntary conservation programs will decline as a result of critical habitat designation, potentially leading to a negative impact on wetland conservation and flood control. As a result of all of these factors, potential benefits resulting from enhanced flood control or wetlands conservation are not quantified in the DEA.

(44) *Comment:* A commenter notes that designation of critical habitat could impact oil and gas development and commercial and residential development.

Our Response: A draft economic analysis (DEA) was made available to the public through the notice of availability (NOA) published November 12, 2008. Chapter 3 of the DEA discusses impacts on oil and gas development. Chapter 5 of the DEA discusses potential impacts on residential and commercial development.

(45) *Comment:* One commenter stated that designation of critical habitat can be ''neutral or beneficial'' in promoting participation in voluntary conservation agreements. Another commenter stated that designation will lead some landowners to stop cooperating in voluntary conservation efforts.

Our Response: Section 2.4 of the DEA provides a detailed discussion of the potential for changes in participation in voluntary conservation agreements. The DEA concludes there may be fewer landowner enrollments in programs like the WRP that provide substantial benefits for bears, and as a result, critical habitat designation could result in a reduction of the quantity and quality of available bear habitat relative to what would have been available without designation. There was insufficient information available, however, to quantify this potential change.

(46) *Comment:* Several commenters stated that potential impacts on agricultural activities, including impacts on land uses and land values, could be greater than estimated in the DEA. In addition to the apiary fencing costs cited in the DEA, commenters believe that additional impacts could result from crop depredation, drainage impacts (i.e., impacts on the ability to clear farm and parish drainage systems), and additional requirements for pesticide registration.

Our Response: The DEA discusses potential impacts on agricultural activities in section 6.1. As noted in that section, damage to bees and hives was identified as the most costly agricultural problem associated with the Louisiana black bear. While other crop depredation may occur, no complaints have been filed with either the Service or the Louisiana Department of Wildlife and Fisheries. Therefore, there is little information available to gauge the extent or frequency of crop depredation and its resulting economic impact.

While recognizing that many local farmers and landowners may be concerned about the possible land-use restrictions, the Service has not identified current agricultural practices as a threat to the Louisiana black bear. As a result, to date, there have been no consultations under section 7 of the Act related to these activities, and no impacts are forecast to occur in the DEA.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the Louisiana black bear, we reviewed and considered comments from the public and peer reviewers on the May 6, 2008, proposed designation of critical habitat (73 FR 25354) and the November 12, 2008, notice of availability of the associated draft economic analysis (73 FR 66831). We also reviewed the most recent data for land ownership and habitat types and reevaluated the information and data used in our previous proposal. As a result, we made the following changes to our proposed designation:

(1) We made corrections to ensure the consistent use of terms, citations, and grammar. We also provided clarification on the use of the terms ''occupied at time of listing'', ''occupied'', and ''breeding'' populations.

(2) We made corrections to the identity of areas under Federal and State ownership by including Federal- and State-owned Farmers Home Administration (FmHA) tracts. In the proposed rule (73 FR 25354), we had incorrectly assigned those tracts to private ownership.

(3) We made one correction to clarify our description of one primary constituent element (PCE). In the proposed rule (73 FR 25354; May 6, 2008), we omitted the word ''wide'' for PCE 2(b). That portion of the PCE now reads as follows: (b) Forested areas greater than 150 feet (46 meters) wide along waterways and sloughs and having a diversity of plant species and age-classes of sufficient area, quality, and configuration, as described in PCE 1 above, to provide dispersal habitat between breeding populations to maintain genetic variability and promote stable or increasing populations, and to provide habitat supporting safe movement, foraging, and denning.

(4) In our May 6, 2008, proposed rule we identified 1,331,635 ac (538,894 ha) of habitat containing features essential for Louisiana black bear conservation in three units (73 FR 25354). As we continued work on the proposed designation, we made one change that affected the total area considered to meet the definition of critical habitat. We refined our mapping accuracy to better define habitat that contains essential features to minimize the inclusion of areas that do not contain PCEs for the Louisiana black bear, based primarily on a reevaluation of the information and data used in our proposal. This meant that, to the best extent possible, we removed areas that do not contain the PCEs and are not otherwise considered to provide features essential to the Louisiana black bear's conservation. Consequently, we delineated a boundary that more accurately reflects telemetry data and known breeding habitat. No changes were made as a result of the refined mapping to the proposed critical habitat boundaries of Units 1 and 2. However, we identified lands within the proposed boundary for Unit 3 that do not contain the PCEs, including urban development, agricultural land, and poor-quality non-PCE habitats such as marsh and semi-permanently inundated swamps that do not link higher quality habitats. Although we are reporting a decrease in the overall area of Unit 3, removal of those areas has not reduced the extent of habitat containing the PCEs in this unit. This refinement resulted in a decrease of 85,516 ac (34,607 ha) in Unit 3. As a result, we determined that 133,636 ac (54,080 ha) in Unit 3 meet the definition of critical habitat.

(5) In the proposed rule (73 FR 25354; May 6, 2008), we stated that we were evaluating the sufficiency of the permanent easement protection of the restored land from future conversion or development for the purpose of possible exclusion of private lands enrolled in the WRP via a permanent easement. We have determined that the benefits of excluding lands enrolled in a permanent easement under the WRP from critical habitat designation outweigh the benefits of including these lands, and that their exclusion will not result in extinction of this subspecies. Therefore, we are excluding 48,751 ac (19,729 ha) of Unit 1 and 1,547 ac (626 ha) of Unit 2 under section 4(b)(2) of the Act, and we are designating the remaining 628,505 ac (254,347 ha) of land in Unit 1 and 433,680 ac (175,504 ha) of land in Unit 2 as critical habitat (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion of this exclusion).

Except as previously discussed, our final designation includes all areas proposed as critical habitat for the Louisiana black bear (i.e., Units 1, 2, and 3), totaling approximately 1,195,821 ac (483,932 ha).

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) that may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species 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 be otherwise 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 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 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 and biological features that are essential to the conservation of the species, and be included only if those features may require special management consideration 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 essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

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 represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. 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 designation, 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 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, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and 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 those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These 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 for the Louisiana black bear from the biological needs of this subspecies as described in the Critical Habitat section of the proposed rule to designate critical habitat for the Louisiana black bear published in the **Federal Register** on May 6, 2008 (73 FR 25354).

Space for Individual and Population Growth and Normal Behavior

Louisiana black bear populations are currently found in the bottomland hardwood (BLH) forest communities and associated habitat of the Lower Mississippi River Alluvial Valley. Prime black bear habitat is characterized by relatively inaccessible terrain, thick understory vegetation, and abundant food sources in the forms of shrubs or tree-borne soft or hard mast (Pelton 1982, p. 507). BLH forest community types in the range of the Louisiana black bear, expressed in terms of dominance-codominance, include *Taxodium distichum* (bald cypress); *T. distichum-Nyssa aquatica* (bald cypress-water tupelo); *Betula nigra-Platanus occidentalis* (river birch-American sycamore); *Populus deltoides* (cottonwood); *Celtis laevigata-Ulmus americana-Fraxinus pennsylvanica* (sugarberry-American elm-green ash); *Quercus nuttallii-U. americana-F. pennsylvanica* (Nuttall oak-American elm-green ash); *Q.lyrata-Carya aquatica* (overcup oak-water hickory); *Liquidambar styraciflua-Q. nigra* (sweetgum-water oak); and *Q. michauxii-Q. falcata* (swamp chestnut oak-cherrybark oak) (BBCC 1997, p. 15). Benson (2005, p. 56, Table 4.1) described habitat types in terms of species, flooding regime, and age as: (1) Upland forests—BLH forests in relatively high elevation sites not subject to frequent flooding; and (2) lowland forest—BLH forests in relatively low elevations subject to seasonal or annual flooding. Louisiana black bear habitat in the Lower Atchafalaya population differs from the Tensas and Upper Atchafalaya areas in that it includes, in addition to forested wetlands (e.g., deciduous forests, cypress forests, deciduous and bald cypress forests, shrub-scrub marshes), open marshes, deciduous forest spoil banks, and upland hardwood forest (Nyland 1995, p. 58). The interspersion of these communities may be important in meeting the seasonal needs of the Lower Atchafalaya Louisiana black bear (Nyland 1995, p. 58). The coastal (or wetland) habitats may provide escape cover, food sources, and secure travel corridors between other habitat types (Jones and Pelton 2003, p. 193).

The size of the area necessary for black bears may differ depending on population density, habitat quality, conservation goals, and assumptions regarding minimum viable populations (Rudis and Tansey 1995, p. 172). For example, Rudis and Tansey (1995, p. 172), citing personal communications, reported estimates of minimal areas needed to support a black bear population ranging from 79,000 ac (32,000 ha) in forested wetlands to 197,684 ac (80, 000 ha) in upland forests. Cox *et al.* (1994, p. 50) estimated that a population of 200 or more bears could require a habitat base of approximately 490,000 to 980,000 ac (198,000 to 397,000 ha). Maintaining and enhancing key habitat patches within breeding habitat is a critical conservation strategy for black bears (Hellgren and Vaughan 1994, p. 276). Areas should be large enough to maintain female survival rates above the minimum rate necessary to sustain a population (Hellgren and Vaughan 1994, p. 280). Weaver (1999, pp. 105–106) documented that bear home ranges and movements were centered in forested habitat and noted that actions to conserve, enhance, and restore that habitat would promote population recovery, although no recommendations on minimum requirements were provided. Hellgren and Vaughn (1994, p. 283) concluded that large, contiguous forests are a critical conservation need for black bears.

One approach to assessing Louisiana black bear habitat needs is to look at existing densities; however, density estimates should be used with caution as they can be influenced by population estimation methodology and study area delineation. No single area-density relationship has been developed for Louisiana black bears; however, density estimates have been developed for Louisiana black bears in two locations.

Bear density for the TRNWR subgroup was estimated to be 1 bear per 686 ac (0.36 per km^2). This is low compared to the adjacent Deltic subgroup with a density of 1 bear per 173 ac (1.43 per km^2) (Boersen *et al.* 2003, p. 204). The unusually high densities observed on the Deltic tracts may be the result of the small size of the habitat fragments and accessibility of adjacent desirable agricultural crops (Boersen *et al.* 2003, p. 204).

Another approach to assess Louisiana black bear habitat requirements is to examine bear movements and home ranges. The home ranges of Louisiana black bears appear to be closely linked to forest cover (Marchinton 1995, p. 48). Female range size may be partly determined by habitat quality (Amstrup and Beecham 1976, p. 345), while male home range size may be determined by the distribution of females (i.e., to allow for a male's efficient monitoring of a maximum number of females) (Rogers 1987, p. 19). Male black bears commonly disperse, and adult male bears can be wide-ranging with home ranges generally three to eight times larger than those of adult females (Pelton 1982, p. 507) and that may encompass several female home ranges (Rogers 1987, p. 19). Dispersal by female black bears is uncommon and typically is a short distance (Rogers 1987, p. 43). Females without cubs generally had larger home ranges than females with newborn cubs (Benson 2005, p. 46), although this difference was observed to vary seasonally, with movements more restricted in the spring (Weaver 1999, p. 99). Following separation of the mother and yearling offspring, young female black bears commonly establish a home range partially within or adjacent to their mother's home range (Rogers 1987, p. 39). Young males, however, generally disperse from their maternal home range. Limited information suggests that subadult males may disperse up to 136 mi (219 km) (Rogers 1987, p. 44; BBCC 1997, p. 22).

Home range estimates, calculated as the minimum convex polygon (MCP), vary for the Louisiana black bear. The MCP is a way to represent animal movement data and is calculated as the smallest (convex) polygon that contains all the points a group of animals have visited. Mean MCP home range estimates for the Tensas River NWR population were 35,736 ac (14,462 ha) and 5,550 ac (2,426 ha) for males and females, respectively (Weaver 1999, p. 70). Male home ranges (MCP) in the Upper Atchafalaya population may be as high as 80,000 ac (32,375 ha), while female home ranges are approximately 8,000 ac (3,237 ha) (Wagner 1995, p. 12). Lower Atchafalaya population home ranges (MCP) were estimated to be 10,477 ac (4,200 ha) for males, and 3,781 ac (1,530 ha) for females (Wagner 1995, p. 12). It was speculated that the smaller home ranges of Lower Atchafalaya bears when compared to Upper Atchafalaya bears may be due to superior habitat quality in the coastal area (Wagner 1995, p. 25). However, the smaller home range estimates may have been affected by the small number of data points and bear use of garbage for food in many coastal locations.

Louisiana black bears located on the Deltic lands in the Tensas River population have very small home ranges compared to other black bear populations with an estimated average home range (MCP) for males of 1,729 ac (700 ha) and 1,038 ac (420 ha) for females (Beausoleil 1999, p. 57). The smaller home ranges for this population are believed to be a result of the bears' reliance on the surrounding agricultural crops for forage (Benson 2005, p. 95) and the overall higher quality of the forested habitat (Weaver 1999, pp. 90–91). Based on observations of the Deltic populations, Benson (2005, p. 95) suggested that it may be possible for a relatively large number of bears to require less space and persist in limited forest habitat if food is sufficiently abundant and diverse.

Habitat loss, besides reducing the overall area, can result in fragmentation or isolation of habitat, as is evident for the Louisiana black bear (Clark 1999, p. 107). Habitat fragmentation can restrict bear movements both within and between populations (Beausoleil *et al.* 2005, p. 403; Marchinton 1995, p. 53; BBCC 1997, p. 23). This can result in increased mortality as bears are forced to forage on less protected sites, travel farther to forage, or cross barriers such as roads (Pelton 1982, p. 507; Hellgren and Maehr 1992, pp. 154, 155, 156). Open areas, roads, large waterways, development, and large expanses of agricultural land may affect habitat contiguity. Such features tend to impede the movement of bears (Clark 1999, p. 107). Habitat fragmentation also limits the potential for the present Louisiana black bear population to expand its current breeding range (USFWS 1995, p. 8). Habitat fragmentation can create barriers to immigration and emigration that can affect population demographics and genetic integrity (Clark *et al.* 2006, p. 12). Bear populations in a relatively large habitat patch are not ensured of long-term survival without recolonization by bears from adjacent patches (Clark 1999, p. 111). The long-term protection of habitat and interconnecting corridors or habitat linkages between viable breeding populations is one of the recovery criteria for the Louisiana black bear (USFWS 1995, p. 14).

Habitat linkages or corridors providing vegetative cover can facilitate the movement of bears through agricultural (or other open) lands, particularly when bears reside in fragmented tracts of forest, as is the case for the Louisiana black bear (Weaver *et al.* 1990b, p. 347). Based on telemetry locations and visual observations, Marchinton (1995, p. 53) determined that wooded drainages were important travel corridors for movement between forested tracts. He noted that those drainages may facilitate movements across agricultural lands and may be important for dispersal. Likewise, Weaver (1999, p. 67) found significant black bear use of habitat linkages between larger forested tracts, including forested edges associated with bayous, their tributaries, various dry ditch bottoms, and brushy ditch and canal banks in various agricultural tracts. Bears were also observed to frequent certain areas of intact forest such as the banks of rivers, sloughs, ditches, and bayous, and Weaver (1999, p. 82) suggested that the term ''habitat linkages'' may be more appropriate than travel corridors when referring to the remnant habitat features that link disjunct wooded tracts.

Beausoleil (1999, p. 62) observed that female Louisiana black bears would not move between woodlots unless they were connected by a forested corridor or were closer than 1,640 feet (ft) (0.5 km) apart. Anderson (1997, p. 74 via T. Edwards, USFWS pers. communication) found that female bears would not travel across expansive agricultural fields that separated forested tracts by 4,541 ft (1.3 km) and observed that bears traveled along tree-lined ditches that were as narrow as 16 ft (5 m) in width (Anderson (1997, p. 74). Similarly, Van Why (2003, pp. 30, 46) observed Louisiana black bears using narrow strips of vegetation (less than 33 ft (10 m) in width) to travel through inhospitable habitats such as open fields. Weaver *et al.* (1990b, p. 347) recommended a 197-ft (60-m) buffer zone along waterways as a travel corridor or habitat linkage. Bears will travel through open habitat (Weaver 1999, p. 81), but they may travel farther from the forested edge when in a wooded corridor versus in an open field (Anderson 1997, p. 42).

Habitat linkages, as described in Louisiana black bear population studies, are generally described as narrow and linear in shape, most likely resulting from the fact that ditches and bayous are

the only remaining features connecting habitat fragments within a population. Non-linear habitat patches located between existing populations may also provide areas for bear movement. Such linkages increase the amount of forested habitat (Beausoleil *et al.* 2005, p. 408) and may serve not only as pathways for concealed travel, but may also provide other functions such as escape cover, bedding and denning sites, routes for juvenile dispersal, and avenues for genetic exchange (Weaver 1999, pp. 82–83). Habitat linkages ranging from 2.5 ac to 12 ac (1 ha to 5 ha) can provide cover for black bears (Pelton and Van Manen 1997, p. 33). Smaller areas (*i.e.*, 2.5 ac (1 ha)) may provide suitable movement paths for shorter, within-population movements but may not be sufficient for establishing larger movement paths between populations. Beausoleil *et al.* (2005, pp. 409–410) recommended the establishment of habitat corridors to reduce the isolation of forested habitats for black bears and suggested that corridor width should vary with length and increase with distance. Similarly, Cox *et al.* (1994, p. 35) suggested that black bears likely require broader habitat areas rather than thin corridors when connecting distant populations.

While there is scientific discussion regarding the relative importance of wildlife corridors in general, they have been shown to be important for black bears (Cox *et al.* 1994, p. 34). Furthermore, in modeling spatial landscape structure and species dispersal, King and With (2002, p. 33) found that habitat clumping may help mitigate the negative effect that habitat loss has on dispersal success. Habitat linkages (or corridors) are needed to facilitate bear movement between habitat patches within and between black bear populations (Anderson 1997, p. 82; Wagner 1995, p. 43; BBCC 1997, p. 54). Telemetry data on Louisiana black bear movements in the Tensas River Basin demonstrate that habitat linkages should be considered in management plans intended to ensure Louisiana black bear population viability in fragmented habitats and to provide for the large home ranges (particularly of males) needed for unimpeded breeding and dispersal (Weaver 1999, p. 106).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The Louisiana black bear's diet is dominated by plant material throughout the year (Pelton 1982, p. 508; Anderson 1997, p. 77; Benson 2005, p. 20). A portion of the diet is made up of animal matter, primarily beetles and other insects (which are consumed year-round (Anderson 1997, p. 79)), and occasionally carrion (Pelton 1982, pp. 508–509; Benson 2005, p. 27). Diets vary seasonally in relation to food availability as does habitat use (Nyland 1995, p. 53). After den emergence in the spring, bears utilize remaining fat reserves (Pelton 1982, p. 509). As this is generally a time of lower food abundance, bears may lose weight but will soon take advantage of any available protein-rich foods (Pelton 1982, p. 509). On the Deltic tracts, such items include grasses, sedges, oats, wheat, and beetles (Anderson 1997, p. 49; Benson 2005, p. 26). During the summer, food abundance and diversity increases, and soft mast, found primarily in forest openings, becomes a major food source. Soft mast may include such items as blackberry, grape, mulberry, sassafras, and paw paw (Weaver *et al.* 1990b, p. 344; Anderson 1997, p. 78; BBCC 1997, p. 18; Benson 2005, p. 26). Recently timbered areas can provide foraging opportunities for bears as they allow light penetration through canopy openings and provide rotting wood that harbors beetles and grubs (Weaver *et al.* 1990b, p. 344). Louisiana black bears were also observed using early successional areas (e.g., planted with trees or regenerating naturally) planted with trees (0 to 12 years) or by an open canopy and dense understory of shrubs, vines, and saplings (Benson 2005, p. 56, Table 4.1). Such areas provide food and cover similar to natural openings in forests.

Food availability during the late summer and fall is critical as bears need to increase their fat stores in preparation for winter dormancy and denning (Pelton 1982, p. 509; BBCC 1997, p. 18). Acorns and other hard mast are important food items during this period (Pelton 1986, p. 51; Benson 2005, p. 27). Extensive foraging may occur and bears may travel great distances in search of food (Pelton 1982, p. 509). It is not uncommon for a bear to gain one to two pounds of fat daily (Pelton 1986, p. 51). Bears will forage on agricultural crops, which may dominate the diet depending on availability (Nyland 1995, p. 59; Anderson 1997, p. 78; Benson 2005, p. 20).

An important factor affecting black bear populations appears to be variation in food supply and its effect on physiological status and reproduction (Rogers 1976, pp. 436–437). Black bear cub survival and development are closely associated with the physical condition of the mother (Rogers 1976, p. 434). Cub mortality rates and female infertility are typically greater in single or successive years of poor mast production or failure (Rogers 1987, p. 53; Eiler *et al.* 1989, p. 357; Elowe and Dodge 1989, p. 964). Nutrition may affect the age of female reproductive maturity and subsequent fecundity (Pelton 1982, p. 504). Reproduction may occur as early as 2 years of age for black bears in high quality habitat; in poor or marginal habitat, reproduction may not occur until 7 years of age (Rogers 1987, pp. 51–52, Table 8). Litter size may be affected by food availability prior to denning (Rogers 1987, p. 53, Table 10). During periods of food shortages, bears range farther in search of food. This increased movement substantially increases their chances for human encounters and human-related mortality (Rogers 1976, p. 436; Pelton 1982, p. 509). These high mortality rates are suspected to be greater for yearling and subadult black bear males dispersing from the family unit, and are probably the result of starvation, accidents (e.g., vehicular collisions), and poaching.

Cover or Shelter

Black bears undergo a period of winter dormancy that allows them to circumvent food shortages and severe weather (Pelton 1982, p. 508). Louisiana black bears generally enter dens in early December and emerge in mid-April (Weaver 1999, p. 116, Table 4.1). They may remain somewhat active during this period and have been observed changing den sites and foraging, although their home range sizes are reduced (Weaver 1999, p. 115; Hightower *et al.* 2002, p. 16). Louisiana black bears use trees, brush piles, and ground nests for denning (Weaver 1999, p. 118; Hightower *et al.* 2002, p. 14). An individual bear may use one or more different den types, often within the same season (Weaver 1999, p. 118). Weaver (1999, p. 120) noted that most den trees were bald cypress, but also observed bear use of other species such as overcup oak and American sycamore. Den tree cavities appeared to result from broken tops or limbs and averaged approximately 49 ft (15 m) in height (Weaver 1999, p. 121). Den trees primarily occur along permanently flooded sloughs, seasonally flooded flats, lakes, bayous, and rivers (Weaver 1999, p. 130). Ground dens were located in wooded habitat and constructed from stacked palmetto and vegetation arranged in a wreath-like manner. Many of the wreath-like dens included excavated depressions, but those created from stacked palmetto did not (Weaver 1999, pp. 121–122). Dens were observed in forested habitat and constructed against a backdrop such as a felled log, a tree top, or the base of a tree (Weaver 1999, p. 122). In the Tensas population,

13 of 17 dens were located in forested stands that were at least partially timbered within the last 5 years (Weaver 1999, p. 122). Brush pile dens were observed in residual tree tops that were felled during recent timber harvests (Weaver 1999, pp. 122; Hightower *et al.* 2002, p. 14). Trees large enough and sufficiently mature to contain useable cavities are almost always found in places inaccessible to logging (Marchinton 1995, p. 55), or are left standing due to their low economic value.

The importance of high-quality cover for bedding, denning, and escape cover increases as forests become smaller and more fragmented, and as human encroachment and disturbance in bear habitat increases (Pelton 1986, p. 52). The thick understory found in some BLH forests and adjacent areas provides high-quality escape cover, which is considered especially important where fragmented habitats put bear populations in closer proximity to humans. Bears frequently use forested areas and scrub-shrub habitat as escape cover and as resting sites or ''daybeds'' (Weaver *et al.* 1990b, p. 347). Daybeds are generally shallow, unlined depressions excavated in soft ground or leaf litter (Pelton 1982, p. 509; BBCC 2005, p. 13). Secure areas for bedding, denning, and escape can be found in cover that limits visibility, slows foot travel, and creates noise when traversed (Weaver *et al.* 1990b, p. 347).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The average age for first female reproduction varies widely across black bear studies; however, most describe breeding occurring between 3 years and 5 years of age (Weaver 1990, p. 5). Breeding occurs in summer and the gestation period for black bears is 7 to 8 months (Weaver 1990, p. 5). Delayed implantation occurs in the black bear; blastocysts float free in the uterus and do not implant until late November or early December (Pelton 1982, p. 505). Because of this, pregnant females are not subject to the nutritional drain of a developing fetus while they forage to increase fat reserves for winter torpor (Weaver 1990, p. 5). Additional information on female habitat requirements is described in the *Space for Individual and Population Growth and Normal Behavior* discussion above. Females give birth during the denning season. The normal litter size is two, although litter sizes of one to four cubs (and rarely five) do occur. Cubs are altricial (helpless) at birth (Weaver 1990, p. 5) and generally exit the den site with the female in April or May. Young bears stay with the female through summer and fall, and den with her the next winter. The young disperse in their second spring or summer, prior to the female's period of estrus (Pelton 1982, p. 505). Estrus starts when the female becomes physiologically capable of reproducing again. However, not all females produce cubs every other winter; reproduction is related to physiological condition (i.e, female bears that do not reach an optimal weight or fat level may not reproduce in a given year) (Rogers 1987, p. 51).

Females give birth while in their winter dens. Den site characteristics were described in more detail in the ''Cover or Shelter'' discussion above. Secure den sites for reproduction are particularly important as the young would not survive without their mother should she abandon her den because of disturbance. Benson (2005, p. 84) found that female reproductive status affected den type use, as females with cubs used trees for dens more frequently than ground dens. However, Hightower *et al.* (2002, p. 14) did not detect differences in den type use by females based on their reproductive status.

Tree dens may be an important component for female reproductive success in areas subject to flooding (Hellgren and Vaughan 1989a, p. 352). Den trees located in cypress swamps would appear to provide an increase in security (e.g., decrease in disturbance) compared to ground dens. The availability of den trees, however, does not appear to be a limiting factor for reproductive success (Weaver and Pelton 1994, p. 431); den trees may not be necessary for Louisiana black bears if flooding and disturbance are minimized (Hightower *et al.* 2002, p. 15).

To afford additional protection to denning bears, when we listed the Louisiana black bear, we extended legal protection to candidate and actual den trees by promulgating a special rule under section 4(d) of the Act and found at 50 CFR 17.40(i) (57 FR 588, January 7, 1992). As the terms imply, ''actual den tree'' refers to any tree used by a denning bear during the winter and early spring seasons. Candidate den trees are defined in the final rule as *Taxodium distichum* (bald cypress) and *Nyssa sp.* (tupelo gum) in occupied Louisiana black bear habitat having a diameter at breast height of 36 inches (in) (92 centimeters (cm)) or greater, with visible cavities, and occurring in or along rivers, lakes, streams, bayous, sloughs, or other water bodies. Results of recent research involving Louisiana black bears indicate that they will use virtually any species of tree for a den site (including overcup oak, American elm, sweetgum, water hickory, and sycamore), if it meets the minimum diameter and cavity presence criteria described above (Hightower *et al.* 2002, p. 16).

Habitats That Are Protected From Disturbance

Remoteness is an important spatial feature of black bear habitat. In the southeastern United States, remoteness is relative to forest tract size and the presence of roads. Examples of remoteness important for black bear habitat include: A tract of timberland 0.5 mi (0.8 km) from well-maintained roads and development (Rudis and Birdsey 1986, p. 5), a forested tract of more than 2,500 ac (1,000 ha) (Rudis and Tansey 1995, p. 172), or a tract with 0.8 mi or less of road per mile^2 (0.5km/km^2) of forest (Pelton 1986, p. 52). Remote timberlands, by this definition, are relatively rare within the historical range of black bears and are located primarily in Louisiana (Rudis and Birdsey 1986, p. 5). Increasing road density increases the likelihood of human disturbances, which can limit habitat suitability and use for black bears.

In some cases, where remoteness does not exist, bears are adaptable and through changes in behavior can survive and thrive in proximity to humans if afforded areas of retreat that ensure little chance of close contact or visual encounters. For example, bears may shift home range locations in response to increases in road densities (Brody and Pelton 1989, p. 10). However, in areas of fragmented habitat, behavioral adjustments may not be sufficient to offset the negative effects of barriers such as roads. Approximately 38 percent of known Louisiana black bear mortalities are the result of road kills (Pace *et al.* 2000, p. 368).

Primary Constituent Elements for the Louisiana Black Bear

Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area known to be occupied at the time of listing that are essential to the conservation of the Louisiana black bear and which may require special management considerations or protections. The physical and biological features are the primary constituent elements (PCEs) laid out in a specific spatial arrangement and quantity to be essential to the conservation of the species. All areas designated as critical habitat for the Louisiana black bear are occupied, are within the subspecies' historic geographic range, and contain sufficient

PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the subspecies and the requirements of the habitat to sustain the essential life history functions of the subspecies, we have determined that Louisiana black bear's PCEs are:

(1) Breeding habitat (i.e., within or contiguous to the home range of females in a core breeding population) consisting of hardwood forest areas having a diversity of age, class, and species and containing sources of hard mast (acorns and nuts) produced by such species as mature oaks, hickories, and pecan, and that may include one or more of the following:

(a) Areas containing soft mast provided by a diversity of plant species, including, but not limited to, blackberry, grape, mulberry, sassafras, paw paw, etc., occurring primarily in forest openings, on spoil banks, and in areas adjacent to forested habitat;

(b) Areas within forested habitat providing protein sources consisting of beetles and other colonial insects found in rotting and decaying wood found on the forest floor;

(c) Grasses and sedges found in forest openings, on spoil banks with open canopies, and in vegetated areas adjacent to forested habitats; and

(d) Secure areas for reproduction, winter dormancy, day bedding, and escape. These include areas with den trees (e.g., bald cypress, overcup oak, American sycamore, etc.); areas with a thick understory, shrub-scrub habitat, openings along spoil banks, vegetated areas adjacent to forests, or any vegetation that provides cover, limits visibility, slows foot travel, or creates noise when traversed; early successional forests (0 to 12 years) with an open canopy and dense understory of shrubs, vines, and saplings; or areas with vegetation such as palmetto, greenbriars, blackberry, dewberry, and downed trees.

(2) Corridors consisting of:

(a) Habitat patches 12 acres (5 hectares) or greater in size; or

(b) Forested areas greater than 150 feet (46 meters) wide along waterways and sloughs and having a diversity of plant species and age-classes of sufficient area, quality, and configuration, as described in PCE 1 above, to provide dispersal habitat between breeding populations to maintain genetic variability and promote stable or increasing populations, and to provide habitat supporting safe movement, foraging, and denning.

As described in the Primary Constituent Elements section, breeding habitat (PCE–1) must be interspersed and connected by suitable corridors (PCE–2) to allow for movement between core populations.

This final designation is designed for the conservation of PCEs necessary to support the life history functions of the Louisiana black bear and the areas containing those PCEs in the appropriate quantity and spatial arrangement essential for the conservation of the subspecies. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas occupied by the species at the time of listing contain the features that are essential to the conservation of the species, and whether these features may require special management consideration or protections. As stated in the final listing rule (January 7, 1992; 57 FR 588), threats to the physical and biological features essential to the conservation of the Louisiana black bear include the direct and indirect impacts of land clearing or development resulting in habitat fragmentation and land use conversion, primarily to agriculture and development. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the value of critical habitat for both the survival and recovery of the Louisiana black bear is appreciably reduced. More specifically, such activities could reduce the extent of habitat available for foraging, denning, escape, reproduction and sheltering within populations, and severely limit or prevent dispersal and genetic exchange among populations. Examples of actions that have effects on Louisiana black bear habitat include, but are not limited to:

(1) Initiation or expansion of agricultural operations; hydrocarbon exploration and development; commercial, industrial, and residential development; flood control projects that involve clearing of woody vegetation on Corps flowage easement lands; and other activities that would require the permanent removal or fragmentation of forested wetlands;

(2) Road construction, large-scale or wide-ranging development, and flood-control projects that would result in barriers that are impermeable to bears;

(3) Large-scale, temporary clearing of all woody vegetation on flowage easements within the Atchafalaya River Basin to facilitate drainage of the Mississippi and Atchafalaya Rivers during extraordinarily high water periods. Such activities could temporarily eliminate habitat for foraging, denning, escape, reproduction, and sheltering within populations occurring in Unit 2, and severely limit or prevent dispersal and genetic exchange between populations within Units 2 and 3.

As described in more detail in the unit descriptions below, we find that the PCEs within each unit may require special management considerations or protection due to threats to the Louisiana black bear or its habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

We have acquired and evaluated additional data since our previous proposal May 6, 2008 (73 FR 25354), and have revised the critical habitat boundary to avoid the inclusion of non-PCE land. All critical habitat units discussed in this designation are occupied by the Louisiana black bear. We use the term ''occupied'' to indicate the subspecies' presence in an area without regard to reproductive information (i.e., the transient or permanent presence of male or female bears). This is in contrast to the use of this same term by Louisiana black bear resource managers who have historically used it to indicate areas with physical evidence of reproduction (e.g., young, females with young, or lactating females). We use the term ''breeding areas or breeding habitat'' to refer to areas with physical evidence of reproduction.

Our conservation strategy is based on a review of the biological needs of this subspecies as described in the literature, and the recovery strategy outlined in the Louisiana black bear recovery plan. In proposing critical habitat, our two-fold strategy is to: (1) Reduce the potential for extinction by providing habitat in areas of sufficient composition and size to maintain the viability of existing reproducing populations (as determined by breeding habitat); and (2) ensure the demographic vigor and genetic variability of existing populations by providing habitat of sufficient composition and location to provide areas of connectivity between adjoining breeding populations. The discussion below summarizes the criteria used to

identify critical habitat. For additional information, refer to the proposed critical habitat rule published on May 6, 2008 (73 FR 25354).

We include land within the critical habitat unit boundaries contingent upon that land being occupied at the time of listing and containing the physical and biological features essential to the conservation of the Louisiana black bear, meaning that it either (1) serves as breeding habitat, or (2) serves as an immigration or emigration corridor between the core breeding populations.

We have defined breeding habitat as bottomland and upland hardwood forests and adjacent vegetated habitats having a diversity of plant species and age-classes with evidence of use by at least five adult female bears that have home ranges that partially or completely overlap (core areas). An area that is completely or partially within one or more of those home ranges, but outside of the core area, as defined above, would be considered breeding habitat if it: (1) Has demonstrated use (via radio telemetry) of at least one female bear and is larger than 5 ac (2 ha) in size; or (2) is larger than 100 ac (40 ha) in size, regardless of telemetry confirmation of female presence, and is not separated from the breeding habitat core area by a landscape feature that may negatively influence natural bear movements (e.g., a State or Federal road, or a large waterway). Evaluation of existing telemetry data suggests that forest use by fewer than five females is generally indicative of temporary residence as a result of dispersal (noted most often within, and surrounding, the reintroduction complex).

Immigration and emigration corridors between existing breeding habitats were determined primarily by the distance between existing core breeding populations. Corridor boundary width varies and was further determined by the following three factors (listed below in order of decreasing significance):

(1) The width necessary to incorporate more than one potential habitat linkage. Selection of only one path of habitat linkages would not account for the nomadic nature of bears, nor for their spatially large habitat requirements, and would assume (likely incorrectly) that all bears would select the same path while traveling the significant distance that separates existing populations. According to Cox *et al.* (1994, p. 35), ''black bears likely require broader habitat areas rather than thin corridors if connecting distant populations is a goal.''

(2) The feasibility of delineating all existing forested areas that is suitable for smaller scale movements that occur during immigration and emigration between existing populations. Anderson (1997, p. 74 via T. Edwards, USFWS, personal communication) found that bears would travel along ''tree-lined ditches'' that were as narrow as 16 ft (5 m) in width. Delineation of such small linkages (which are often abundant and sinuous) that provide connectivity between existing populations is not technically feasible.

(3) The presence of existing landscape features, such as large water bodies, and State and Federal highways. Placing critical habitat boundaries along large landscape features is preferable because those features often affect or direct bear movements (i.e., form the actual boundary of such movements) and because large landscape features can be clearly defined for regulatory purposes.

We re-assessed the boundaries of all three critical habitat units based on comments received on our original proposal, additional data acquired subsequent to that proposal, and the original data used in the proposal (73 FR 25354; May 6, 2008) which includes: occurrence data for the Louisiana black bear (LDWF, the Service, Louisiana State University, and the University of Tennessee); 1998, 2004, 2005, and 2007 digital raster and digital orthophoto quarter-quadrangles (DOQQ); and 1:24,000 scale digital raster graphics (DRG) of the USGS topographic quadrangles.

The nature of the landscape within Unit 1 (i.e., heavily fragmented forests) significantly reduces the latitude in delineating that boundary because it necessitates the inclusion of virtually all remnant forests to ensure that sufficient habitat (i.e., breeding habitat and corridors) is incorporated within the critical habitat boundary. Based on comments received regarding our May 6, 2008 proposal (73 FR 25354), we evaluated the potential for increasing the width of Unit 1 particularly in the corridor areas between breeding populations. Our evaluation concluded that increasing the unit width in this region would incorporate primarily agricultural fields and virtually no additional forested habitat. Including additional agricultural areas within the critical habitat boundary would not be beneficial because those areas do not contain features essential to the conservation of the subspecies. Accordingly, the boundary of Unit 1 has not been modified from our proposal.

The landscape in the northern portion of Unit 2 resembles that of Unit 1 in regard to forest fragmentation, and provides similar limitations in delineating critical habitat. The southern portion of Unit 2, however, traverses the ARB and presented a distinctive challenge in determining the placement of boundaries through an expansive (over 600,000 ac [242,812 ha]) and virtually uninterrupted forested system. The ARB, from U.S. Interstate 10 along its northern boundary to U.S. Highway 90 along its southern boundary, does not support reproducing females. We used the original geospatial data sets from our previous proposal, and employed additional data to determine the areas within the ARB that would most likely facilitate bear movement between those two populations. That newer data included Light Detection and Ranging (LIDAR) Data, classified digital Landsat imagery, and Louisiana black bear habitat selection preference data.

LIDAR data is derived from a remote sensing system that is used by the National Oceanic and Atmospheric Administration and National Aeronautics and Space Administration (NASA). Data are collected from a transceiver, which is mounted to a fixed wing aircraft that sends and receives laser pulses along the surface of the earth (*http://www.csc.noaa.gov/products/sccoasts/html/tutlid.htm*). The final product is a set of longitude, latitude, and elevation positions for every data point, from which a digital elevational model of ground surface can be generated. LIDAR point data are available for the entire ARB and were used to identify higher elevations that would be generally more conducive to bear usage (particularly for travel between existing populations).

The Landsat Program uses satellites to capture moderate resolution remote-sensing data of the earth's surface. Digital Landsat imagery is the product of that program, and is jointly managed by NASA and the U.S. Geological Survey (USGS). Several Landsat images for the ARB have been preliminarily classified into categories of land and water by the USGS—National Wetlands Research Center (Allen *et al.* 2008). The classification approach taken by Allen *et al.* (2008) in their ongoing study uses a tasseled cap (TCAP) transformation to reduce the original Landsat data to three transformed bands of brightness, greenness, and wetness. Images taken at many different river stages are classified into areas of land and water and are then used to demonstrate the range of expected inundation with changing river stages. We compared ARB inundation and dry land prevalence at a variety of river stages with the probability of exceedance of those river stages during each month of the year based on stage duration curves that we developed from the Corps' Atchafalaya

River gauge data. Through that comparison, we were able to use images that were classified at known river stages to temporally evaluate ARB land that could provide suitable travel and dispersal corridors for bears (i.e., that would not be inundated), especially during the period when dispersal would be most likely to occur.

Wagner (2003) developed a landscape-scaled habitat selection function for two Louisiana black bear populations (Upper and Lower ARB) using telemetry data and classified Landsat imagery. He used a TCAP transformation, as described above for the USGS study, to classify Landsat imagery. Bear habitat selections were evaluated based on a comparison of that classification to known telemetry locations. Bear habitat preferences within the ARB are not known because very few bears, if any, permanently reside within that system. The result of Wagner's (2003) study was the development of a GIS-based model that predicts bear habitat preferences throughout the ARB, using classified imagery and known telemetry locations from the two ARB subpopulations.

Based on our evaluation of these three data sets, we determined that the boundary of Unit 2 sufficiently incorporates the best available science and was correctly delineated as shown in our May 6, 2008, proposal (73 FR 25354). Based on comments we received regarding that proposal, we also evaluated the potential for increasing the width of the southern boundary of Unit 2, where it connects to Unit 3. However, similar to the constraints noted for Unit 1, the prevalence of agriculture and urban development in this region of the State precludes the incorporation of additional forested habitat in the southernmost extent of Unit 2. We have determined that it would not be beneficial or justifiable to incorporate large agricultural and urban expanses within the critical habitat boundary as those lands do not contain features essential to the conservation of the subspecies. Accordingly, the boundary of Unit 2 has not been modified from our May 6, 2008, proposed rule.

We have made relatively minor revisions to the Unit 3 boundary based on a reevaluation of the information and data used in our proposal (73 FR 25354). The result is a boundary that more accurately reflects telemetry data and known breeding habitat, and that minimizes the inclusion of areas that do not contain PCEs for the Louisiana black bear. Areas that have been removed from the previously proposed boundary include urban development, agricultural land, and poor-quality non-PCE habitats such as marsh and semi-permanently inundated swamps that do not link higher quality habitats. Although we are reporting a decrease in the overall acreage of Unit 3, removal of those areas has not reduced the extent habitat containing the PCEs in this unit.

All areas designated as critical habitat contain the physical and biological features essential to the conservation of the subspecies and either: (1) Currently support a breeding population of Louisiana black bears; or (2) function as corridors to maintain movement between core populations. We have determined that those areas are sufficient to conserve the Louisiana black bear.

When determining the critical habitat boundaries for this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the PCEs for the Louisiana black bear. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this critical habitat rule have been excluded by text in this final rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Final Critical Habitat Designation

We are designating three units as critical habitat for the Louisiana black bear. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those three areas are: (1) Tensas River Basin, (2) Upper Atchafalaya River Basin, and (3) Lower Atchafalaya River Basin.

Table 1 shows both the lands designated as critical habitat and the lands being excluded from critical habitat under section 4(b)(2) of the Act. Table 2 summarizes the areas that meet the definition of critical habitat for the Louisiana black bear and areas designated as critical habitat by land ownership (Table 2).

TABLE 1—AREAS THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR THE LOUISIANA BLACK BEAR, AREAS EXCLUDED FROM THIS FINAL CRITICAL HABITAT, AND AREAS DESIGNATED AS CRITICAL HABITAT

[Total area estimates reflect all land within critical habitat unit boundaries. Acre and hectare values were computer generated individually using GIS software, rounded to nearest whole number, and then summed. Totals may not match due to rounding.]

Critical habitat unit	Area that meets the definition of critical habitat in acres (hectares)	Area excluded from final critical habitat in acres (hectares)	Area designated as critical habitat in acres (hectares)
1. Tensas River Basin	677,256 (274,076)	48,751 (19,729)	628,505 (254,347)
2. Upper Atchafalaya River Basin	435,227 (176,130)	1,547 (626)	433,680 (175,504)
3. Lower Atchafalaya River Basin	133,636 (54,080)	0	133,636 (54,080)
Total	1,246,119 (504,286)	50,298 (20,355)	1,195,821 (483,932)

TABLE 2—AREA DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE LOUISIANA BLACK BEAR AND AREAS DESIGNATED AS CRITICAL HABITAT FOR THE LOUISIANA BLACK BEAR BY LAND OWNERSHIP

[Acre and hectare values were computer generated individually using GIS software, rounded to nearest whole number, and then summed. Totals may not match due to rounding.]

Critical habitat unit	Federal in acres (hectares)	State in acres (hectares)	Local and private in acres (hectares)	Total in acres (hectares)
1. Tensas River Basin	100,649 (40,731)	119,273 (48,268)	408,583 (165,348)	628,505 (254,347)
2. Upper Atchafalaya River Basin	15,765 (6,380)	74,187 (30,022)	343,729 (139,102)	433,680 (175,504)
3. Lower Atchafalaya River Basin	7,440 (3,011)	737 (298)	125,459 (50,771)	133,636 (54,080)
Total	123,854 (50,122)	194,197 (78,588)	877,771 (355,221)	1,195,821 (483,932)

Unit Descriptions

Unit 1: Tensas River Basin

Unit 1 consists of 628,505 ac (254,347 ha) of Federal, State, and privately owned lands in the Tensas River Basin. It includes portions of Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Madison, Richland, Tensas, West Carroll, and West Feliciana Parishes. Portions of this land that meet the definition of critical habitat in this area (48,751 ac (19,729 ha)) are enrolled under permanent easements in the WRP. We excluded those lands from critical habitat because we determined the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation. Furthermore, exclusion of these lands will not result in the extinction of this subspecies (*see* Table 1 and ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion of this exclusion).

This unit was occupied at the time of listing and currently provides breeding and corridor habitat for the Louisiana black bear. The perimeter of the northern portion of Unit 1 approximately coincides with the boundaries of the Deltic Timber tracts, TRNWR, and Big Lake Wildlife Management Area (WMA). The perimeter of the southern portion of Unit 1 is bounded primarily by the Red River WMA and Three Rivers Management Area on the north and east; by the Red River, Bayou Jeansonne, and Bayou des Glaises on the west; and by the Lower Old River on the south.

The central portion of this unit serves as a corridor and extends from the south boundaries of Big Lake WMA and TRNWR in Franklin and Tensas Parishes, to the north boundary of Red River WMA in Concordia Parish. The Tensas River and Bayou Cocodrie form most of the western boundary of that corridor. The eastern boundary of that corridor includes the east property boundary of Buckhorn Wildlife WMA, and Louisiana State Highways 573, 566, and 15. This area contains features essential to the conservation of the Louisiana black bear because it serves as a corridor to maintain habitat linkages for immigration and emigration between the existing breeding populations at the northern and southern extents of this unit. Two of the three recovery criteria listed in the Louisiana black bear recovery plan (USFWS 1995, p. 14) specifically state that the eventual delisting of the Louisiana black bear is contingent upon the establishment (where absent) and long-term maintenance of such corridors. According to Clark (1999, p. 111), the stability and long-term viability of disjunct populations may be precluded in the absence of such corridors.

A significant portion of Unit 1 occurs within State and federally owned or managed lands that include TRNWR (68,909 ac (27,886 ha)), Big Lake WMA (19,587 ac (7,927 ha)), Buckhorn WMA (11,238 ac (4,548 ha)), Bayou Cocodrie NWR (13,638 ac (5,519 ha)), Lake Ophelia NWR (17,408 ac (7,045 ha)), Red River WMA (43,570 ac (17,632 ha)), Three Rivers WMA (29,863 ac (12,085 ha)), and Grassy Lake WMA (13,214 ac (5,348 ha)). Habitat restoration within Unit 1 has been primarily accomplished through the WRP, which is administered by the NRCS, and through a major carbon sequestration/habitat restoration project, initiated by Entergy Corporation, the Trust for Public Land, Environmental Synergy, Inc., and the Service. Since the Louisiana black bear was listed as a threatened subspecies in 1992, approximately 53,487 ac (21,645 ha) of marginal agricultural land has been restored in this unit as a result of the WRP program; the program includes perpetual protection through conservation easements for most such tracts. The State of Louisiana has purchased 2,420 ac (979 ha) of Wetland Reserve Program lands as an addition to the BuckhornWMA. As part of an ongoing carbon sequestration initiative, approximately 10,000 acres of marginal agricultural land are planned for purchase, reforestation, and transfer to the Service as an addition to the TRNWR. The first phase of this project was completed in 2005, and involved reforestation of 2,900 ac (1,174 ha) of land that were added to the TRNWR.

Unit 1 contains PCEs 1 and 2. Threats to this subspecies and its habitat that may require special management of the physical and biological features essential for the conservation of the subspecies in this unit include continued habitat fragmentation (from such sources as hydrocarbon exploration and production, transportation development, agricultural activities, and urban sprawl), and human-induced mortality (such as poaching, vehicle strikes, and nuisance abatement activities) which is exacerbated by habitat fragmentation.

Unit 2: Upper Atchafalaya River Basin

Unit 2 consists of 433,680 ac (175,504 ha) of Federal, State, and privately owned lands in the Upper Atchafalaya River Basin. It includes portions of Iberia, Iberville, Pointe Coupee, St. Martin, and St. Mary Parishes. Portions of this land that meet the definition of critical habitat in this area (1,547 ac (626 ha)) are enrolled under permanent easements in the WRP. We excluded those lands from critical habitat because we determined the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation. Furthermore, exclusion of these lands will not result in the extinction of this subspecies (*see* Table 1 and ''Exclusions Under Section

4(b)(2) of the Act'' section of this final rule for a detailed discussion of this exclusion).

This unit was occupied at the time of listing and currently supports breeding and corridor habitat for the Louisiana black bear. The northern half of Unit 2 is bounded primarily by Louisiana Highway 1 on the north, Louisiana Highway 1 and the East Atchafalaya Basin Flood Protection Levee on the east, the Atchafalaya River on the west, and U.S. Interstate 10 on the south. The southern portion extends from U.S. Interstate 10 in St. Martin Parish to U.S. Highway 90 in St. Mary Parish. Its east and west boundaries approximately follow the West Atchafalaya Basin Flood Protection Levee and the Atchafalaya River, respectively. The southern portion of Unit 2 serves as a corridor to maintain immigration and emigration between the existing core breeding populations in Unit 3 and in the northern half of this unit. Two of the three recovery criteria listed in the Louisiana black bear recovery plan (USFWS 1995, p. 14) specifically state that the eventual delisting of the Louisiana black bear is contingent upon the establishment (where absent) and long-term maintenance of such corridors. According to Clark (1999, p. 111), the stability and long-term viability of disjunct populations may be precluded in the absence of such corridors.

Portions of Unit 2 occur within State and federally owned and managed lands that include Atchafalaya NWR (15,762 ac (6,379 ha)), Bayou Teche NWR (3 ac (1 ha)), Sherburne WMA and the adjacent (State-managed) Corps-owned Bayou Des Ourses Area (29,883 ac (12,093 ha)), and Attakapas Island WMA (26,819 ac (10,854 ha)). Habitat restoration within Unit 2 has been relatively limited and primarily accomplished through the WRP program. Approximately 1,550 ac (627 ha) of marginal agricultural land has been restored in this unit as a result of that program; the program includes perpetual protection through conservation easements for most such tracts.

Unit 2 contains PCEs 1 and 2. Threats to the Louisiana black bear and its habitat that may require special management of the physical and biological features essential for the conservation of the subspecies in this unit include continued habitat fragmentation (from such sources as hydrocarbon exploration and production, transportation development, agricultural activities, and urban sprawl), and human-induced mortality (such as poaching, vehicle strikes, and nuisance abatement activities), which is exacerbated by habitat fragmentation.

Unit 3: Lower Atchafalaya River Basin

Unit 3 consists of 133,636 ac (54,080 ha) of Federal, State, and privately owned lands in the Lower Atchafalaya River Basin. It lies south of U.S. Highway 90 (Hwy. 90) in Iberia and St. Mary Parishes. This unit was occupied at the time of listing by the Louisiana black bear and currently supports breeding habitat.

In addition to bottomland hardwood forests, bears within this unit also utilize upland hardwood habitats associated with four salt domes (Avery, Cote Blanche, Weeks Islands, and Belle Isle) and coastal marshes adjacent to those forests. The vast majority of Unit 3 is privately owned, with the exception of 7,440 ac (3,011 ha) of the Bayou Teche NWR, which is unique in that it is the only National Wildlife Refuge established specifically for the conservation of the Louisiana black bear. The boundaries of Unit 3 approximately coincide with U.S. Highway 90 to the north; Avery Island to the west; the Gulf Intracoastal Waterway (GIWW) to the south; then southeast along Big Wax Bayou, southeast of Belle Isle; then northeast along Big Lacassine Bayou to the GIWW; then east along the GIWW; then southeast along Hog Bayou; then northeast along the Wax Lake Outlet to the GIWW; and then east to the Lower Atchafalaya River.

A significant acreage of bottomland hardwood forests in private ownership not associated with the four salt domes is flood-protected via levees, manmade ditches, and pumps. Those flood protection features have caused such forests to lose their wetland classification and associated regulatory protection under the Clean Water Act (33 U.S.C. 1251 *et seq.*). Subsequently, there is continual development along the Hwy. 90 corridor within Unit 3, most of which is not subject to Federal regulation. The Federal Highway Administration and the Louisiana Department of Transportation have proposed an upgrade of U.S. Highway 90, within this unit, to Interstate Highway System standards as an extension of U.S. Interstate Highway 49.

Unit 3 contains PCE 1. Threats to this subspecies and its habitat that may require special management of the physical and biological features essential for the conservation of the subspecies in this unit include continued habitat fragmentation (from such sources as hydrocarbon exploration and production, transportation development, agricultural activities, and urban sprawl), and human-induced mortality (such as poaching, vehicle strikes, and nuisance abatement activities), which is exacerbated by habitat fragmentation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Court 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*, 245 F.3d 434, 442 (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 primary constituent elements to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or 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 Louisiana black bear or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(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 continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Louisiana black bear. Generally, the conservation role of Louisiana black bear critical habitat units is to maintain the viability of existing reproducing populations and to ensure the demographic vigor and genetic variability of existing populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or those activities 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 the Louisiana black bear include, but are not limited to:

(1) Actions that would reduce the extent of habitat available for population maintenance or expansion or that would negatively alter the function of forested corridors, which facilitate genetic exchange between existing populations, through the permanent conversion or fragmentation of those forested habitats. Such activities could include, but are not limited to, initiation or expansion of agricultural operations; hydrocarbon exploration and development; commercial, industrial, and residential development; flood control projects that involve clearing of woody vegetation on Corps' flowage easement lands; and other activities that would require the permanent removal or fragmentation of forested wetlands.

(2) Actions that would create significant barriers to movement both within and among existing populations. Those activities could reduce the availability of habitat for foraging, denning, escape, reproduction, and sheltering within populations, and severely limit or prevent dispersal and genetic exchange among populations. Such actions could include, but are not limited to road construction, large-scale or wide-ranging development, and flood-control projects that would result in barriers that are impermeable to bears.

(3) Actions performed by the Corps that would result in significant habitat losses on their flowage easement lands within the Atchafalaya River Basin. Those activities could include large-scale, temporary clearing of all woody vegetation on easement lands to facilitate drainage of the Mississippi and Atchafalaya Rivers during extraordinarily high water periods. Such activities could temporarily eliminate habitat for foraging, denning, escape, reproduction, and sheltering within populations occurring in Unit 2, and severely limit or prevent dispersal and genetic exchange between populations within Units 2 and 3.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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 based on this analysis we determine that the benefits of exclusion outweigh the benefits of inclusion, then we can exclude the area only if such exclusion would not result in the extinction of the species.

In the following sections, we address a number of general issues that are relevant to the exclusions considered in the final rule.

Benefits of Designating Critical Habitat

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 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 or protected, 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 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 for 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 to the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and 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 be included in the Service's determination of essential habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of the 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, as the jeopardy analysis looks at the action's impact on survival and recovery of the species and the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, 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.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species are not appreciably reduced as the result of a Federal action. Critical habitat designation alone, however, does not require private property owners to undertake specific steps toward recovery of the species. Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation is initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species or adverse modification of its critical habitat or both, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat; they therefore implement recovery actions. We believe that in many instances the regulatory benefit of critical habitat is low when compared to the conservation benefit that can be achieved through implementing habitat conservation plans (HCPs) under section 10 of the Act or other voluntary conservation efforts or management plans. The conservation achieved through such plans is typically greater than what we achieve through multiple site-by-site or project-by-project section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection for particular habitat for at

least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed action. Thus, implementation of an HCP, voluntary conservation action, or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

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. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Louisiana black bear. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners are essential to understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002). We believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can often be high.

Benefits of Excluding Lands With Approved Management Plans

The benefits of excluding lands with approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many also provide conservation benefits to unlisted sensitive species. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat for species in areas covered by a conservation plan could result in the loss of some species' benefits if participants abandon the planning process in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands covered by approved management plans

from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of plant species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCPs and Natural Communities Conservation Plan (NCCP)-HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification, even without the critical habitat designation. Additionally, all other Federal actions that may affect the listed species still require consultation under section 7(a)(2) of the Act, and we review these actions for possibly significant habitat modification in accordance with the jeopardy standard under section 7 of the Act.

Exclusions Under Section 4(b)(2) of the Act

We received several public comments suggesting we exclude lands enrolled under conservation agreements, through programs such as NRCS Conservation Reserve Program (CRP), Wildlife Habitat Improvement Program (WHIP), Environmental Quality Incentives Program (EQIP), Emergency Watershed Program (EWP), and the Service's Partners for Fish and Wildlife Program (PFW), from critical habitat designation. While we believe that excluding lands enrolled in those specific conservation agreements may provide benefits in terms of maintaining landowner cooperation, landowners who enroll in those programs are not bound by an easement that permanently prohibits development or conversion of those lands. Instead, landowners sign an agreement (generally 10 to 15 years in duration) and at the end of that agreement those properties may be converted to another use. In those instances, the protection provided to those lands is not significantly different from that provided by a critical habitat designation under section 7 of the Act (i.e., adverse modification or destruction). As indicated in our response to Comment 24 in the ''Public Comments'' section above we do not conclude that the benefits of excluding those specific lands outweigh the benefits of including them in the designation. Therefore, they have not been excluded from this designation.

However, after consideration under section 4(b)(2) of the Act, we are excluding approximately 50,298 ac (20,355 ha) of non-Federal lands in Units 1 and 2 enrolled under permanent/perpetual easements in the NRCS' WRP from the critical habitat designation for the Louisiana black bear.

We excluded these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions; or

(2) They are appropriate for exclusion under the ''other relevant impact'' provisions of section 4(b)(2) of the Act.

In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Permanent Easement Wetland Reserve Program Lands—Exclusions Under Section 4(b)(2) of the Act

In reviewing lands enrolled under permanent easements under the WRP for potential exclusion under section 4(b)(2) of the Act, we consider (in addition to the general partnership relationships identified above) whether those easements provide for protection and appropriate management, if necessary, of essential habitat and whether the easement incorporates conservation management strategies and actions consistent with currently accepted principles of conservation biology.

The WRP is a voluntary program that provides eligible landowners the opportunity to address wetland, wildlife habitat, soil, water, and related natural resource concerns on private lands in an environmentally beneficial and cost-effective manner. The WRP is authorized by 16 U.S.C. 3837 *et seq.*, and the implementing regulations are found at 7 CFR part 1467. The first and foremost emphasis of the WRP is to protect, restore, and enhance the functions and values of wetland ecosystems to attain habitat for migratory birds and wetland-dependent wildlife, including threatened and endangered species. The WRP is administered by the NRCS (in agreement with the Farm Service Agency) and in consultation with the Service and other cooperating agencies and organizations. The Service participates in several ways, including assisting NRCS with land eligibility determinations; providing the biological information for determining environmental benefits; assisting in restoration planning such that easement lands achieve maximum wildlife benefits and wetland values and functions; and providing recommendations regarding the timing, duration, and intensity of landowner-requested compatible uses.

Land that is eligible for enrollment in the WRP includes such areas as wetlands cleared or drained for farming, pasture, or timber production; certain adjacent lands that contribute significantly to wetland functions and values; restored wetlands that need long-term protection; and existing or restorable riparian habitat corridors that connect protected wetlands. Eligible land must be restorable and suitable for providing wildlife benefits. Thus, the WRP provides an incentive for private landowners to restore non-productive farmland (prior-converted wetlands), and in Louisiana the majority of WRP land under permanent easement is agricultural land that is being restored to its original bottomland hardwood forest habitat.

Under the WRP, there are three enrollment options available for the landowner: (1) Permanent/perpetual easement; (2) 30-year easement; and (3) restoration cost-share agreement. Under the permanent easement option, a conservation easement is placed upon the enrolled lands for perpetuity. When a landowner enrolls in an easement option, the landowner is selling a real property interest to the United States. After the easement is recorded in the local lands record office, the landowner retains ownership and responsibility for the land. The landowner controls access to the land; has the right to hunt, fish, and pursue other undeveloped recreational uses provided such use does not impact other prohibitions listed in the warranty easement deed; and may sell or lease land enrolled in the program (NRCS 2007; pp. 1–2).

Participating landowners may request other prohibited uses such as haying, grazing, or harvesting timber. When evaluating compatible uses, the NRCS evaluates whether that proposed use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established and Federal funds expended. Requests may be approved if the NRCS determines that the activity both enhances and protects the purposes for which the easement was acquired and would not adversely affect habitat for migratory birds and threatened and endangered species.

NRCS retains the right to cancel an approved compatible use authorization at any time if it is deemed necessary to protect the functions and values of the easement. According to the authorizing language (16 U.S.C. 3837a(d)), compatible economic uses, including forest management, are permitted if consistent with the long-term protection and enhancement of the wetland resources for which the easement was established. Should such a modification be considered, NRCS would consult with the Service prior to making any changes.

Benefits of Inclusion—Permanent Easement Wetland Reserve Program Lands

The inclusion of approximately 48,751 ac (19,729 ha) of land in Unit 1 and approximately 1,547 ac (626 ha) of land in Unit 2 enrolled in a permanent easement under the WRP could be beneficial because it identifies lands to be managed for the conservation and recovery of the Louisiana black bear. The process of proposing and finalizing a critical habitat provided the Service with the opportunity to determine the physical and biological features, or PCEs, essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine if there were other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and 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. However, identification of important habitat for the Louisiana black bear and efforts to conserve the subspecies and its habitat were initiated in the early 1990s and resulted in the development of the ''Louisiana Black Bear Habitat Restoration Planning Maps'' (HRPM). Those maps, developed by a collaborative multi-agency and organization group, were designed to directly address Louisiana black bear recovery criteria and designed for use with conservation programs (especially for the WRP), which encourage reforestation of marginal and nonproductive cropland in Louisiana.

Permanent easements under the WRP provide substantial protection and management for the Louisiana black bear and its essential habitat features. In contrast, the only regulatory benefit to critical habitat designation is through the consultation provisions of section 7 of the Act, for Federal actions that may destroy or adversely modify critical habitat. Moreover, the educational benefits of designation are small and largely redundant to those derived through conservation efforts already in place or underway on the 48,751 ac (19,729 ha) of land in Unit 1 and the approximately 1,547 ac (626 ha) of land in Unit 2 that are protected under the WRP permanent easement. The process of developing the HRPM since 1992 has involved extensive input and the involvement of Federal, State, and local government partners including (but not limited to): NRCS, LDWF, BBCC, Louisiana State University, the Louisiana Nature Conservancy, and the Service. Therefore, the educational benefits of designating these private lands in Units 1 and 2 as critical habitat are minimal.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. However, for all of the approximately 50,298 ac (20,355 ha) of land in Units 1 and 2 under a WRP permanent easement, any changes to the easement would be approved only if the NRCS determines that the activity both enhances and protects the purposes for which the easement was acquired. Therefore, we do not anticipate a regulatory benefit to result from designation of those areas as critical habitat.

Benefits of Exclusion—Permanent Easement Wetland Reserve Program Lands

In contrast to the lack of an appreciable benefit by including these lands as critical habitat, their exclusion from critical habitat will help preserve the partnerships that we have developed with the NRCS, other groups and agencies, and private landowners through the development and use of the HRPMs in the implementation of WRP permanent easements. At the time of listing, approximately one-half of Louisiana black bear breeding habitat was privately owned (BBCC 1997, p. 31), making the support and participation of private landowners vital to this subspecies' recovery. As discussed above, and evident in the public comments we received, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden imposed on them for conducting an activity that benefits Louisiana black bear conservation measures such as enrolling in a WRP permanent easement. A significant amount of habitat restoration specifically designed to conserve and recover the Louisiana black bear has been accomplished through the use of the HRPMs and the voluntary cooperation of private landowners enrolled in the WRP.

Since 1992, over 55,000 ac (22,250 ha) of private lands have been enrolled in the NRCS' WRP within critical habitat, which has benefited Louisiana black bear conservation. We have no quantitative data to prove that landowner enrollment in voluntary conservation programs may decrease as the result of critical habitat designation. We received unfavorable landowner responses during the 1993–94 critical habitat proposal process when the majority of comments received were in opposition to the designation, and several landowners who had previously allowed black bear research activities on their lands subsequently denied access to researchers and agency personnel. Furthermore, the NRCS' staff and managers, who work with private landowners on a daily basis, have indicated that there would likely be negative impacts (real or perceived) to voluntary conservation activities on private property by designating existing and newly created habitat as critical habitat and thus could result in a significant detrimental effect on future voluntary habitat restoration efforts (May 29, 2008, meeting with the Service). Similarly, comments from other professionals (Louisiana Department of Wildlife and Fisheries) and peer reviewers who interact regularly with private landowners, as well as comments received from a conservation group and landowners themselves, have indicated their belief that the negative perceptions associated with critical habitat designation would have detrimental impacts on black bear conservation efforts and enrollment in voluntary landowner conservation programs. In the case of lands enrolled under a permanent easement in the WRP, those easement restrictions provide substantial protection and management for the Louisiana black bear and its essential habitat features above that provided by designation of critical habitat, which only precludes destruction or adverse modification.

Finally, landowner enrollment in the WRP has been primarily driven by the financial incentive provided to them through the easement payment and, in many instances, a desire to restore the land for Louisiana black bears or other wildlife. We know of no data that would indicate an increase in voluntary

landowner enrollment due to possible regulatory restrictions. On the contrary, the comments we have received during the comments period indicate the opposite.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Permanent Easement Wetland Reserve Program Lands

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands enrolled in permanent easement under the WRP as critical habitat for the Louisiana black bear. We found that the benefits of inclusion were minimal since protections afforded by the WRP permanent easements currently provide just as much, if not more, protection than critical habitat designation would provide. We also found substantial benefits to excluding these areas, such as maintaining non-Federal partnerships and providing opportunities for using flexible tools for restoration of the Louisiana black bear's habitat. We believe the cooperation of private landowners to provide access to habitat and participate in restoration actions would be lost if critical habitat were designated on these lands. Based on this evaluation, we find that the benefit of excluding lands enrolled in permanent easement under the WRP lands outweighs the benefit of including those lands as critical habitat for the Louisiana black bear.

Exclusion Will Not Result in Extinction of the Species—Permanent Easement Wetland Reserve Program Lands

Exclusion of these 50,298 ac (20,355 ha) of non-Federal lands from the final designation of critical habitat will not result in the extinction of the Louisiana black bear because these lands are permanently conserved and are, or will be, managed for the benefit of this subspecies under the terms of the WRP permanent easement. The jeopardy standard of section 7 of the Act and routine implementation of habitat protection through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the Louisiana black bear under the jeopardy standard will remain in place for the areas excluded from critical habitat.

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 the 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 exclusions 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 economic analysis (DEA) was made available for public review on November 12, 2008 (73 FR 66831). We accepted comments and information on the DEA until December 12, 2008. Following the close of the comment period, a final analysis of the potential economic effects of the designation (FEA) was developed taking into consideration the public comments and any new information.

The primary purpose of the FEA is to estimate the potential economic impacts associated with the designation of critical habitat for the Louisiana black bear. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. The economic analysis separates the costs associated with conservation measures and economic impacts that occurred pre-designation from those that are likely to occur as a result of the designation. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. The economic analysis separated the costs associated with the areas that we proposed to exclude from the areas that we proposed to designate at the time of the May 6, 2008, proposed rule (73 FR 25354). This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis examines activities taking place both within and adjacent to the designation. It estimates impacts based on activities that are ''reasonably foreseeable'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20-year timeframe from when the proposed rule became available to the public (73 FR 25354; May 6, 2008). The 20-year timeframe was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects become increasingly speculative.

Based on our analysis, we concluded that the designation of critical habitat would not result in a significant economic impact. The present estimated value of baseline economic impacts associated with Louisiana black bear conservation efforts ranged from $68.4 million to $76.6 million discounted at 3 percent, or $84.9 million to $97 million discounted at 7 percent. The potential post-designation incremental economic impacts for the next 20 years range from $1.5 million to $8.6 million, applying a 3 percent discount rate, or $1.1 million to $6.3 million applying a 7 percent discount rate. The range in values of incremental costs is a result of the uncertainty in forecasting the number of new oil and gas wells that are likely to be drilled in the next 20 years.

Economic impacts attributable to critical habitat designation (i.e., incremental impacts) are associated entirely with oil and gas activities. Incremental costs were based on industry costs associated with the modification or relocation of above-ground well sites.

The post-designation baseline costs for the WRP were estimated to be $6.2 million based on the assumption that WRP enrollment would continue at the same rate as the past over the next 20 years. There may be an incremental effect of decreased WRP enrollment as a result of critical habitat designation for the Louisiana black bear; however there was insufficient public data to quantify that anticipated decrease.

We do not find the economic costs to be significant. Therefore, we have not excluded any areas from this designation of critical habitat based on economic impacts.

A copy of the FEA (with supporting documents) is included in our supporting file and may be obtained by contacting Lafayette Ecological Services Field Office (see **ADDRESSES** section) or for downloading from the Internet at *http://www.regulations.gov* or *http://www.fws.gov/lafayette.*

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 (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of 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 the Louisiana black bear 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities 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 subspecies is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Louisiana black bear. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (*see Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Louisiana black bear and the proposed designation of critical habitat. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Chapters 2 through 7 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Oil and gas exploration and development; (2) subspecies/habitat management; (3) recreational and residential development; (4) agriculture; (5) transportation; and (6) forestry.

The final economic analysis identified 45 small entities that may be affected by the designation of critical habitat for the Louisiana black bear. All of those entities were associated with oil and gas development and exploration. The total estimated impact per small entity over 20 years would range from between 1.0 to 5.4 percent of the small entity's median revenues. Additionally, the final economic analysis estimates annualized impacts associated with conservation activities for the Louisiana black bear could range from $25,100 to $141,000 discounted at the 7 percent rate over the next 20 years.

The final economic analysis concludes that, with the exception of impacts related to oil and gas exploration and development, there are no incremental impacts resulting from designation of critical habitat for the Louisiana black bear that may be borne by small businesses.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Louisiana black bear will not have a significant economic impact on a substantial number of small entities, and 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 final economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Louisiana black bear conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(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 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 Louisiana black bear 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 Louisiana black bear does not pose significant takings implications for lands within or affected by the designation.

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 critical habitat designation with appropriate State resource agencies in Louisiana. We received comments from the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Natural Resources and have addressed them in the Response to Comments section of the rule. The designation of critical habitat in areas currently occupied by the Louisiana black bear may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the 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 Louisiana black bear.

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 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 Louisiana black bear. Therefore, we are not designating critical habitat for the Louisiana black bear on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Lafayette Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this rulemaking are the staff members of the Lafayette Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Bear, Louisiana black'' 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							
*	*	*	*	*	*		*
Bear, Louisiana black.	*Ursus americanus luteolus.*	U.S.A. (LA—all counties; MS—all counties south of or touching a line from Greenville, Washington County, to Meridian, Lauderdale County; TX—all counties east of or touching a line from Linden, Cass County, SW to Bryan, Brazos County, thence SSW to Rockport, Aransas County).	Entire	T	456	17.95(a)	17.40(i)
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (a) by adding an entry for Louisiana Black Bear (*Ursus americanus luteolus*), in the same order that the subspecies appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Louisiana Black Bear (*Ursus americanus luteolus*)

(1) Critical habitat units are depicted for Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Iberia, Iberville, Madison, Pointe Coupee, Richland, St. Martin, St. Mary, Tensas, West Carroll, and West Feliciana Parishes, Louisiana, on the maps below.

(2) The primary constituent elements of critical habitat for the Louisiana black bear are the habitat components that provide:

(i) Breeding habitat (i.e., within or contiguous to the home range of females in a core breeding population) consisting of hardwood forest areas having a diversity of age class and species and containing sources of hard mast (acorns and nuts) produced by such species as mature oaks, hickories, and pecan, and that may include one or more of the following:

(A) Areas containing soft mast provided by a diversity of plant species, including, but not limited to, blackberry, grape, mulberry, sassafras, paw paw, etc., occurring primarily in forest openings, on spoil banks, and in areas adjacent to forested habitat.

(B) Areas within forested habitat providing protein sources consisting of beetles and other colonial insects found in rotting and decaying wood found on the forest floor.

(C) Grasses and sedges found in forest openings, on spoil banks with open canopies, and in vegetated areas adjacent to forested habitats.

(D) Secure areas for reproduction, winter dormancy, day bedding, and escape. These include areas with den trees (e.g., bald cypress, overcup oak, American sycamore, etc.); areas with a thick understory, shrub-scrub habitat, openings along spoil banks, vegetated areas adjacent to forests, or any vegetation that provides cover, limits visibility, slows foot travel, or creates noise when traversed; early successional forests (0 to 12 years) with an open canopy and dense understory of shrubs, vines, and saplings; or areas with vegetation such as palmetto, greenbriars, blackberry, dewberry, and downed trees.

(ii) Corridors consisting of:

(A) Habitat patches 12 acres (5 hectares) or greater in size; or

(B) Forested areas greater than 150 feet (46 meters) wide along waterways and sloughs and having a diversity of plant species and age-classes of sufficient area, quality, and configuration, as described in paragraph (2)(i) of this entry, to provide dispersal habitat between breeding populations to maintain genetic variability and promote stable or increasing populations, and to provide habitat supporting safe movement, foraging, and denning.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates.

(5) *Note:* Index map follows:

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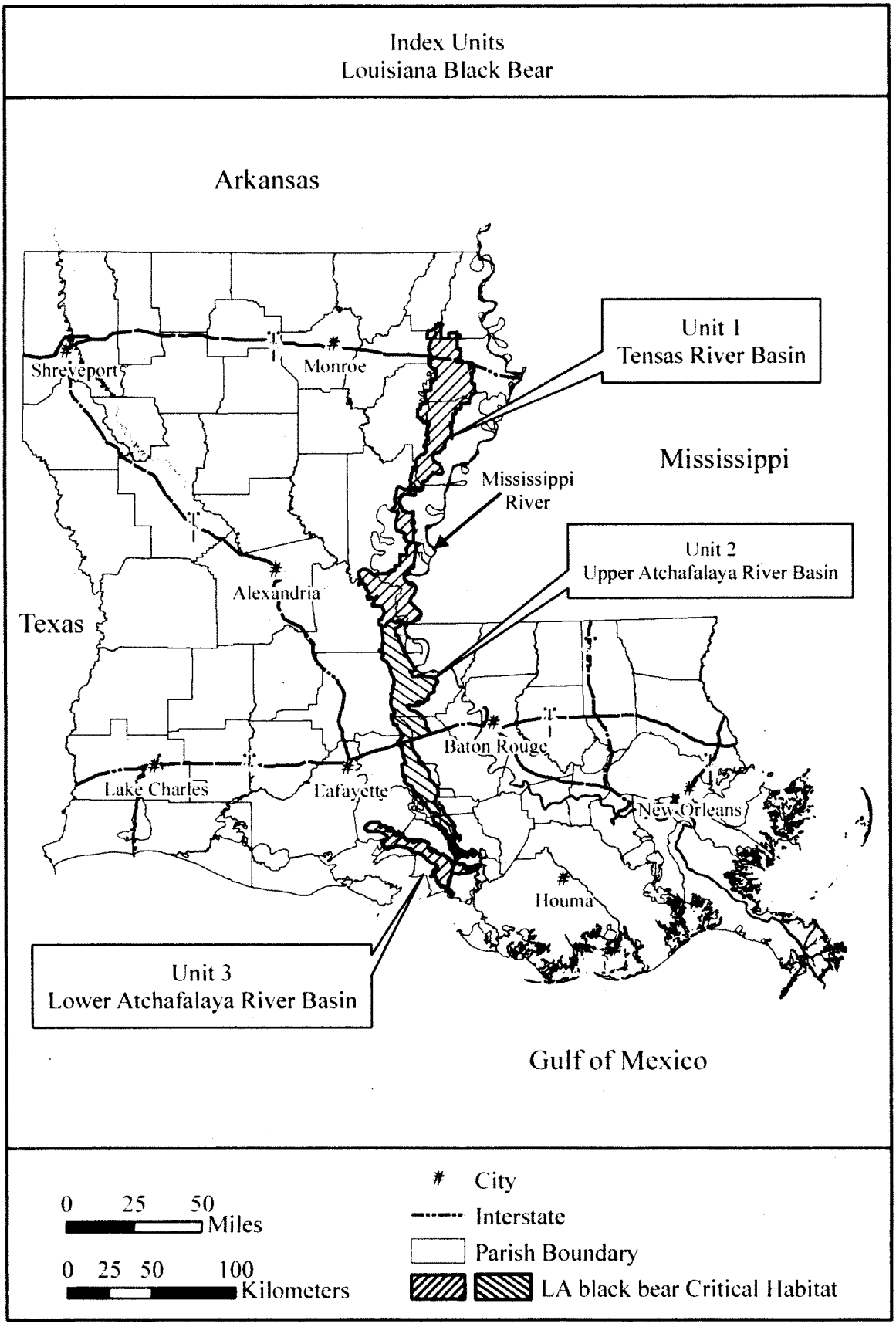

BILLING CODE 4310–55–C

(6) Unit 1: Tensas River Basin. Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Madison, Richland, Tensas, West Carroll, and West Feliciana Parishes, Louisiana.

(i) From USGS 1:24,000 scale digital ortho-photo quarter-quadrangles: Acme SE; Acme SW; Big Bend NE; Big Bend NW; Big Bend SE; Big Bend SW; Como NE; Como SE; Crowville NE; Crowville SE; Deer Park NW; Deer Park SW; Delhi NE; Delhi NW; Delhi SE; Delhi SW; Dunbarton NE; Dunbarton NW; Dunbarton SE; Dunbarton SW; Epps NE; Epps NW; Epps SE; Epps SW; Fairview NW; Fairview SW; Ferriday North NE; Ferriday North NW; Ferriday South NW; Ferriday South SW; Fort Adams NW; Fort Adams SE; Fort Adams SW; Fortune Fork NW; Fortune Fork SW; Foules NE; Foules NW; Foules SE; Foules SW; Frogmore NE; Frogmore NW; Frogmore SE; Frogmore SW; Gretna Green NE; Gretna Green NW; Gretna Green SE; Gretna Green SW; Ile Natchitoches NE; Ile Natchitoches NW; Ile Natchitoches SE; Ile Natchitoches SW; Indian Lake NE; Indian Lake NW; Indian Lake SE; Indian Lake SW; Innis NE; Lac Sainte Agnes NE; Lac Sainte Agnes NW; Lac Sainte Agnes SE; Lake Bruin NW; Lake Mary NW; Lake Mary SW; Lamar SE; Larto Lake South SE; Larto Lake South SW; Lower Sunk Lake NE; Lower Sunk Lake NW; Lower Sunk Lake SE; Lower Sunk Lake SW; Monterry NE; Monterry SE; Newlight NE; Newlight NW; Newlight SE; Newlight SW; Oakley NE; Oakley SE; Oakley SW; Panther Lake NE; Panther Lake NW; Panther Lake SE; Panther Lake SW; Saranac NW; Saranac SW; Simmesport NE; Simmesport NW; Slocum NE; Slocum NW; Slocum SE; Slocum SW; Somerset NW; Tallulah SW; Tendale NE; Tendal NW; Tendal SE; Tendal SW; Tensas Bluff NE; Tensas Bluff NW; Tensas Bluff SE; Tensas Bluff SW; Turnbull Island NE; Turnbull Island NW; Turnbull Island SE; Turnbull Island SW; Waterproof NE; Waterproof NW; Waterproof SE; Waterproof SW; Waverly SE NE; Waverly SE NW; Waverly SE SE; Waverly SE SW; Westwood NE; Westwood NW; Westwood SE; Westwood SW; Louisiana. 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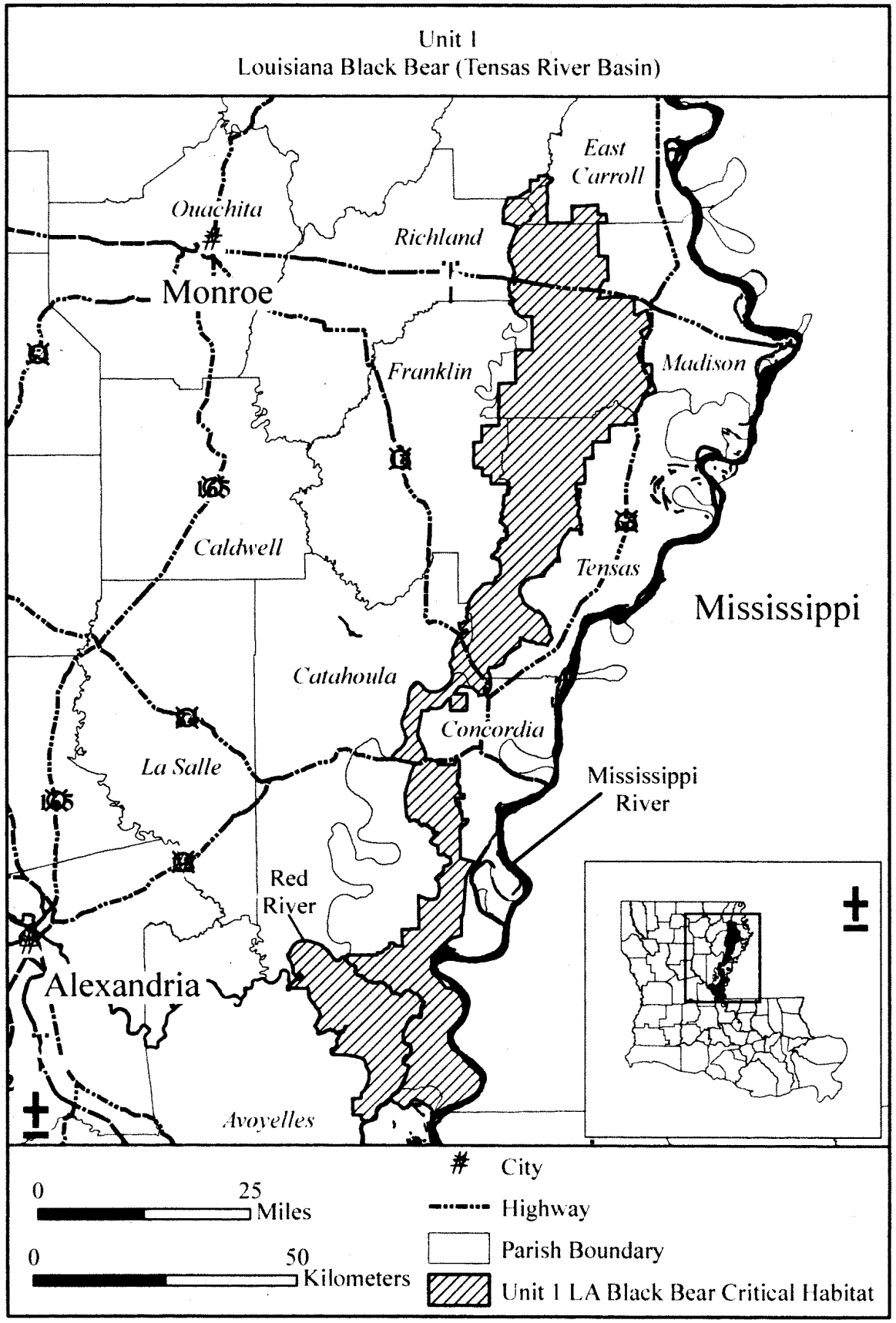
(ii) Note: Map of Unit 1, Tensas River Basin (Map 2), follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2: Upper Atchafalaya River Basin. Iberia, Iberville, Pointe Coupee, St. Martin, and St. Mary Parishes, Louisiana.

(i) From USGS 1:24,000 scale digital ortho-photo quarter-quadrangles: Batchelor NE; Batchelor NW; Batchelor SE; Batchelor SW; Bayou Current NE; Bayou Current NW; Bayou Current SE; Big Bend SE; Butte La Rose NE; Butte La Rose NW; Butte La Rose SE; Butte La Rose SW; Catahoula NE; Catahoula NW; Catahoula SE; Catahoula SW; Centerville NE; Centerville NE SW; Centerville NW; Centerville NW NE; Centerville NW NW; Centerville NW SE; Centerville NW SW; Centerville SE; Charenton NE; Charenton SE; Cow Bayou NW; Cow Bayou SW; Erwinville NW; Fordoche NE; Fordoche NW; Fordoche SW; Grand River SW; Innis NE; Innis NW; Innis SE; Innis Jackass Bay NE; Jackass Bay NW; Jackass Bay SE; Jackass Bay SW; Krotz Springs NE; Krotz Springs SE; Lacour SW; Lake Chicot NW; Lake Chicot SW; Lake Mongoulois NE; Lake Mongoulois NW; Lake Mongoulois SE; Lake Mongoulois SW; Loreauville NE; Lottie NE; Lottie NW; Lottie SE; Lottie SW; Maringouin NE; Maringouin NW; Maringouin NW NE; Maringouin NW NW; Maringouin NW SE; Maringouin NW SW; Maringouin SE; Maringouin SW; Melville NE; Melville NW; Melville SE; Melville SW; Morganza NE; Morganza NW; Morganza SE; Morganza SW; New Roads NW; New Roads SW; North Bend NE; Patterson NE; Patterson NW; Portage NE; Simmesport NE; Simmesport SE; Swayze Lake NE; Tiger Island NW; Tiger Island SE; Tiger Island SW; Turnbull Island SE; Turnbull Island SW; Louisiana. 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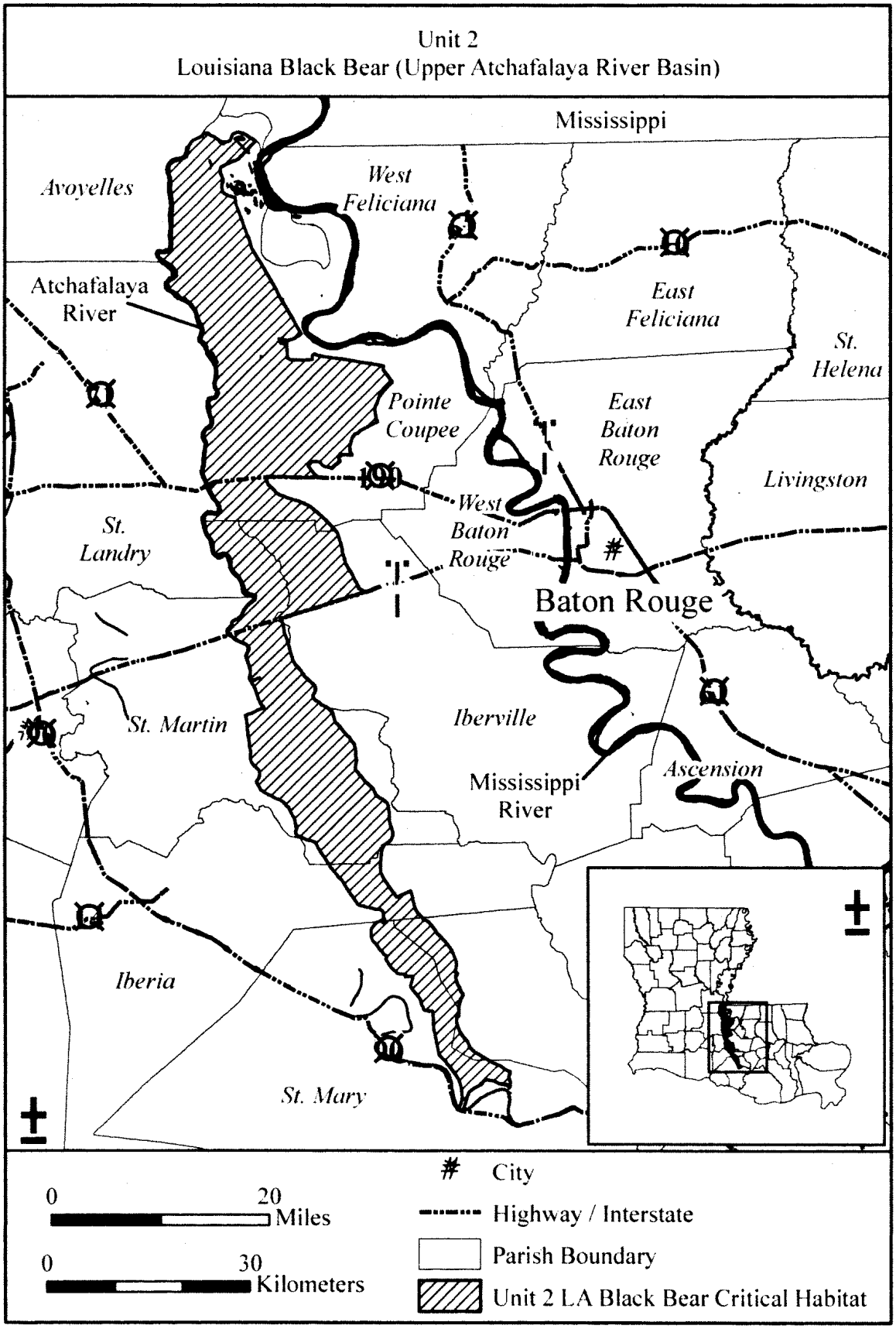
(ii) Note: Map of Unit 2, Upper Atchafalaya River Basin (Map 3), follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) Unit 3: Lower Atchafalaya River Basin. Iberia and St. Mary Parishes, Louisiana.

(i) From USGS 1:24,000 scale digital ortho-photo quarter-quadrangles: Belle Isle NE; Belle Isle NW; Belle Isle SE; Centerville SW; Delcambre SE; Ellerslie NE; Ellerslie NW; Ellerslie SE; Franklin NE; Franklin NW; Franklin SE; Franklin SW; Jeanerette SW; Kemper NE; Kemper NW; Kemper SE; Kemper SW; Morgan City NW; Morgan City SW; New Iberia South SE; New Iberia South SW; North Bend NE; North Bend NW; North Bend SE; North Bend SW; Patterson NW; Patterson SE; Patterson SW; Point Chevreuil NE; Weeks NE; Weeks NW; Weeks SE; Weeks SW; Louisiana. 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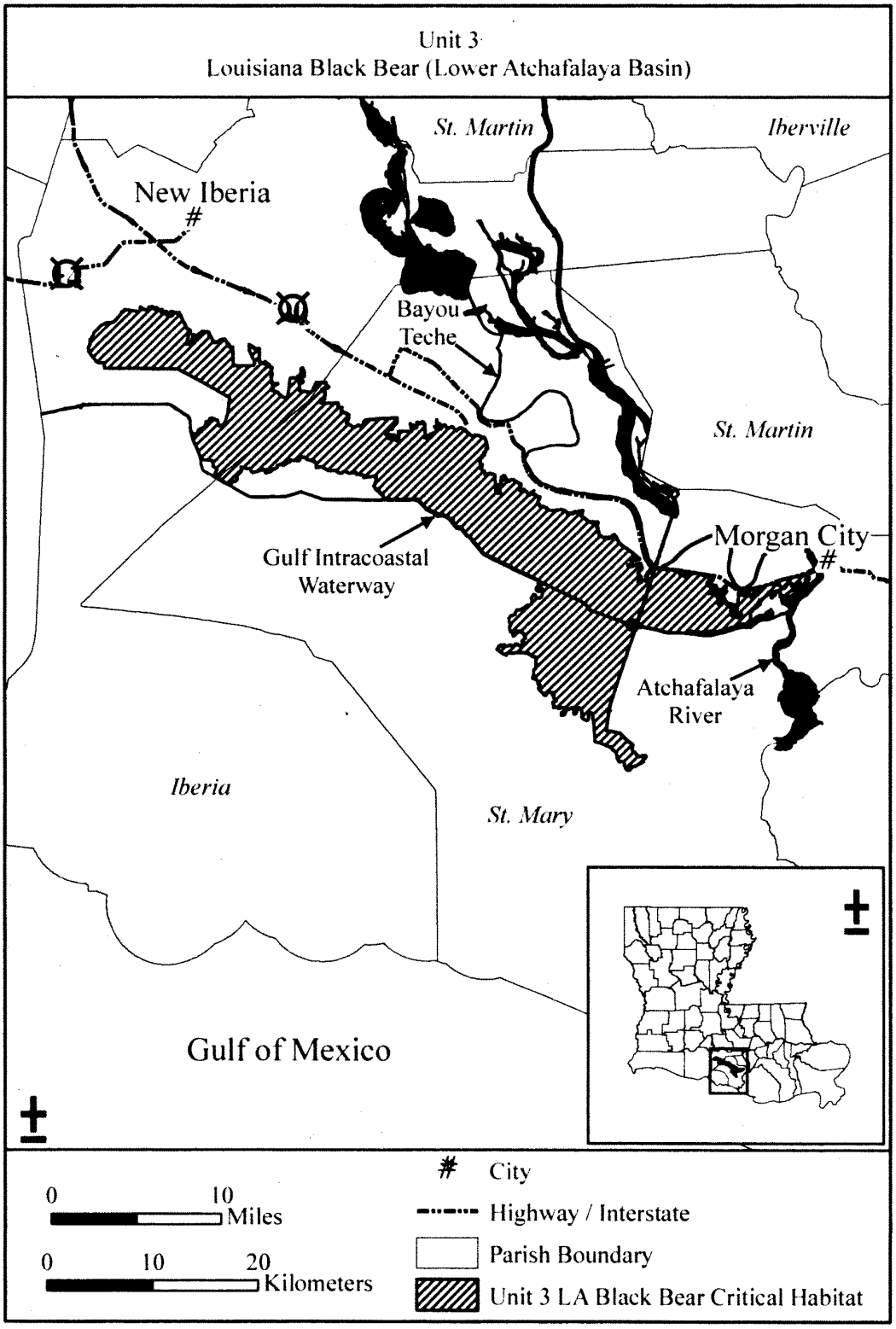
(ii) Note: Map of Unit 3, Lower Atchafalaya River Basin (Map 4), follows:

BILLING CODE 4310–55–P



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Dated: February 20, 2009.

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9–4536 Filed 3–9–09; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
March 10, 2009

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Chub (Oregonichthys crameri); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0010; 92210–1117–000–B4]

RIN 1018–AV87

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Chub (Oregonichthys crameri)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Oregon chub (*Oregonichthys crameri*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 53 hectares (ha) (132 acres (ac)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Benton, Lane, Linn, and Marion Counties, Oregon.

DATES: We will accept comments received on or before May 11, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by April 24, 2009.

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:* U.S. mail or hand-delivery: Public Comments Processing, *Attn:* RIN 1018–AV87; 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* ''Public Comments'' section below for more information).

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266 (telephone 503–231–6179; facsimile 503–231–6195). If you use a telecommunications device for the deaf (TDD) call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

1. The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

2. Specific information on:

- The amount and distribution of habitat for the species included in this proposed rule;
- What areas occupied at the time of listing, and that contain features essential for the conservation of the species, we should include and why; and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

3. Land use designations and current or planned activities in areas occupied by the species, and their possible impacts on the species and the proposed critical habitat.

4. Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and the benefits of including or excluding areas that exhibit these impacts.

5. Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

6. Special management considerations or protections that the proposed critical habitat may require.

7. Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate concerns and comments.

You may submit your comments and materials concerning this 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 hardcopy 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 hardcopy 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 at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For a more complete discussion of the ecology and life history of this species, *please see* the Oregon Chub 5-year Review Summary and Evaluation completed February 11, 2008 (*http://www.fws.gov/pacific/ecoservices/endangered/recovery/Documents/Oregonchub.pdf*).

Description and Taxonomy

The Oregon chub (*Oregonichthys crameri*) was first described in scientific literature in 1908 (Snyder 1908, pp. 181–182), but it wasn't until 1991 that it was identified as a unique species (Markle *et al.* 1991, pp. 284–289). Oregon chub have an olive-colored back (dorsum) grading to silver on the sides and white on the belly. Scales are relatively large with fewer than 40 occurring along the lateral line; scales near the back are outlined with dark pigment (Markle *et al.* 1991, pp. 286–288). While young of the year range in length from 7 to 32 millimeters (mm) (0.3 to 1.3 inches (in)), adults can be up to 90 mm (3.5 in) in length (Pearsons 1989, p. 17). The species is distinguished from its closest relative, the Umpqua chub (*Oregonichthys kalawatseti*), by Oregon chub's longer caudal peduncle (the narrow part of a fish's body to which the tail is attached), mostly scaled breast, and more terminal mouth position (Markle *et al.* 1991, p. 290).

Distribution and Habitat

Oregon chub are found in slack-water, off-channel habitats with little or no flow, silty and organic substrate, and considerable aquatic vegetative cover for hiding and spawning (Pearsons 1989, p. 10; Markle *et al.* 1991, p. 288; Scheerer and Jones 1997, p. 5; Scheerer *et al.* 2007, p. 3). The species' aquatic habitat is typically at depths of less than or equal to 2 meters (m) (6.6 feet (ft)), and has a summer subsurface water temperature exceeding 15 °Celsius (°C) (61 °Fahrenheit (°F)) (Scheerer and Apke 1997, p. 45; Scheerer 2002, p. 1073; Scheerer and McDonald 2003, p. 69). Optimal Oregon chub habitat provides 1 square meter (m^2) (11 square feet (ft^2)) of aquatic surface area per adult, at depths between 0.5 m (1.6 ft) to 2 m (6.6 ft) (Scheerer 2008b). Oregon chub can be relatively long lived with males living up to 7 years and females up to 9 years, although less than 10 percent of fish in most Oregon chub populations are older than 3 years (Scheerer and McDonald 2003, p. 71). Outside of spawning season, the species is social and non-aggressive with fish of similar size classes schooling and feeding together (Pearsons 1989, pp. 16–17).

The species is endemic to the Willamette River drainage of western Oregon (Markle *et al.* 1991, p. 288) and was formerly distributed throughout the Willamette River Valley in a dynamic network of off-channel habitats such as beaver ponds, oxbows, side channels, backwater sloughs, low-gradient tributaries, and flooded marshes in the floodplain (Snyder 1908, p. 182). Records show Oregon chub were found as far downstream as Oregon City, as far upstream as Oakridge, and in various tributaries within the Willamette basin (Markle *et al.* 1991, p. 288).

Historically, Oregon chub would be dispersed and their habitat regularly altered, increased, or eliminated due to regular winter and spring flood events (Benner and Sedell 1997, pp. 27–28); this dispersal created opportunities for interbreeding between different populations. The installation of the flood control projects in the Willamette River basin altered the natural flow regime, and flooding no longer plays a positive role in creating Oregon chub habitat or providing opportunities for genetic mixing of populations. Flood events now threaten Oregon chub populations due to the dispersal of nonnative species that compete with or prey on Oregon chub. Whereas natural perturbations like floods often favor native species over nonnative species, human perturbations typically favor the nonnative species. In the Santiam River basin, the two largest natural populations of Oregon chub declined substantially after nonnative fishes invaded these habitat during the 1996 floods, and no new populations of Oregon chub were discovered in habitats located downstream of existing chub populations during thorough sampling in 1997–2000. This suggests that no successful colonization occurred as a result of the flooding event (Scheerer 2002, p. 1078).

Currently, the largest populations of Oregon chub occur in locations with the highest diversity of native fish, amphibian, reptile and plant species (Scheerer and Apke 1998, p. 11). Beaver (*Castor canadensis*) appear to be especially important in creating and maintaining habitats that support these diverse native species assemblages (Scheerer and Apke 1998, p. 45). Conversely, the establishment and expansion of nonnative species in Oregon have contributed to the decline of the Oregon chub, limiting the species' ability to expand beyond its current range (Scheerer 2007, p. 92). Many sites formerly inhabited by the Oregon chub are now occupied by nonnative species (Scheerer *et al.* 2007, p. 9; Scheerer 2007a, p. 96). Sites with high connectivity to adjacent flowing water frequently contain nonnative predatory fishes and rarely contain Oregon chub (Scheerer 2007, p. 99). The presence of centrarchids (e.g., *Micropterus* sp. (largemouth bass, smallmouth bass, bluegill) and *Pomoxis* sp. (crappies)), and bullhead catfishes (*Ameiurus* sp.) is probably preventing Oregon chub from recolonizing suitable habitats throughout the basin (Markle *et al.* 1991, p. 291).

Although surveys conducted by the Oregon Department of Fish and Wildlife (ODFW) prior to the 1993 listing of Oregon chub as endangered under the Act indicated the presence of the species at 17 different locations, the impacts of floodplain alteration and nonnative predators and competitors were clearly represented in the relatively small numbers of Oregon chub found at these sites. At the time of listing, these surveys were the best evidence of the then-current distribution of the species. Of these 17 sites, only 9 supported populations of 10 or more Oregon chub, and all but 1 of those populations were found within a 30-kilometer (km) (19-mile (mi)) stretch of the Middle Fork Willamette River in the vicinity of Dexter and Lookout Point Reservoirs in Lane County, Oregon; this stretch represented just 2 percent of the species' historical range (58 FR 53800; October 18, 1993). Very small numbers of the species, between 1 and 7 individuals, were found at the remaining eight of the 17 sites at the time of listing. Currently, the distribution of Oregon chub is limited to 25 known naturally occurring populations and 11 reintroduced populations scattered throughout the Willamette Valley (Scheerer *et al.* 2007, p. 2; 2008a, p. 2).

Previous Federal Actions

In 1993, we listed Oregon chub as endangered, in accordance with the Endangered Species Act (Act) (58 FR 53800; October 18, 1993). In that listing, we concluded that critical habitat was prudent but not determinable. A recovery plan for the Oregon chub was completed in 1998 (USFWS 1998). The Oregon chub recovery plan established certain criteria for downlisting the species from endangered to threatened, which included establishing and managing 10 populations of at least 500 adults each that exhibit a stable or increasing trend for 5 years. The recovery plan states that, for purposes of downlisting the species, at least three populations must be located in each of the three sub-basins of the Willamette River identified in the plan (Mainstem Willamette River, Middle Fork Willamette, and Santiam River). The recovery plan also established criteria for delisting the Oregon chub (i.e., removing it from the List of Endangered and Threatened Wildlife). These include establishing and managing 20 populations of at least 500 adults each, which demonstrate a stable or increasing trend for 7 years. In addition, at least four populations must be located in each of the three sub-basins (Mainstem Willamette River, Middle Fork Willamette, and Santiam River). The management of these populations must be guaranteed in perpetuity.

On March 9, 2007, the Institute for Wildlife Protection filed suit in Federal district court, alleging that the Service and the Secretary of the Interior violated their statutory duties as mandated by the Act when they failed to designate critical habitat for the Oregon chub and failed to perform a 5-year status review (*Institute for Wildlife Protection* v. *U.S. Fish and Wildlife Service*). On March 8, 2007, we issued a notice that we would begin a status review of the Oregon chub (72 FR 10547). We completed the Oregon chub 5-Year Review on February 11, 2008. In a settlement agreement with the Plaintiff, we agreed to submit a proposed critical habitat rule for Oregon chub to the **Federal Register** by March 1, 2009, and to submit a final critical habitat determination to the **Federal Register** by March 1, 2010.

We have established two Safe Harbor Agreements (SHAs) for the Oregon chub; both in Lane County, Oregon, in 2001 (66 FR 30745; June 7, 2001) and 2007 (72 FR 50976; September 5, 2007). These SHAs established new populations of Oregon chub in artificial ponds as refugia for natural populations, which contributes to the conservation of the species by reducing the risk of the complete loss of donor populations and any of their unique genetic material. The SHA policy was developed to encourage private and other non-Federal property owners to voluntarily undertake management activities on their property to enhance, restore, or maintain habitat to benefit federally listed species. SHAs provide assurances to property owners allowing alterations or modifications to enrolled property, even if such actions result in the incidental take of a listed species. For more information on previous Federal actions concerning the Oregon chub, refer to the Determination of Endangered Status for the Oregon Chub published in the **Federal Register** on October 18, 1993 (58 FR 53800) or the 1998 Recovery Plan for Oregon Chub (USFWS 1998).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

1. 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

2. 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 species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that result in the destruction or adverse modification of critical habitat. Section 7 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 government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply. However, even if a destruction or adverse modification finding were to be made, a landowner's obligation would not be to restore or recover the species, but rather, to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat in order to receive the federal agency funding or authorization.

For inclusion in a critical habitat designation, habitat within the geographic area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat that contains features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection. Under the Act, we can designate areas that were unoccupied at the time of listing as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific 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), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, and establish procedures and guidelines to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed 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 designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. 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 scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data

available in determining areas that contain the features that are essential to the conservation of the Oregon chub. Data sources include research published in peer-reviewed articles; previous Service documents on the species, including the final listing determination (58 FR 53800; October 18, 1993) and the Recovery Plan for the Oregon chub (USFWS 1998); and annual surveys conducted by the ODFW (1992 through 2008, as summarized in Scheerer *et al.* 2007 and Scheerer 2008a). Additionally we utilized regional Geographic Information System (GIS) shape files for area calculations and mapping.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

1. Space for individual and population growth and for normal behavior;

2. Food, water, air, light, minerals, or other nutritional or physiological requirements;

3. Cover or shelter;

4. Sites for breeding, reproduction, and rearing (or development) of offspring; and

5. Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We derive the specific PCEs required for the Oregon chub from the biological needs of the species as described in the Background section of this proposed rule and the following information.

Space for Individual and Population Growth and Normal Behavior

Flow Velocities and Depth

Oregon chub habitats are typically slack-water off-channel water bodies with little or no flow, such as beaver ponds, oxbows, side channels, backwater sloughs, low-gradient tributaries (less than 2.5 percent gradient) and flooded marshes (Pearsons 1989, p. 30–31; Markle *et al.* 1991, pp. 288–289; Scheerer *et al.* 2007, p. 3; Scheerer 2008e). The species' swimming ability has been described as poor, and it is believed that no or low flow velocity water optimizes the energy expenditure of these slow fish (Pearsons 1989, p. 30–31). Although Oregon chub habitat may contain water of somewhat greater depth, the species mainly occupies water depths between approximately 0.5–2.0 m (1.6–6.6 ft). In order for a habitat to provide enough space to allow normal behavior for a population of 500 or more individuals, the water body needs to include approximately 500 square meters (m^2) (0.12 ac) or more of aquatic surface area between 0.5–2.0 m (1.6–6.6 ft) deep. (Scheerer 2008b).

Cover

The species' habitat preference varies depending on lifestage and season, but all Oregon chub require considerable aquatic vegetation for hiding and spawning activities (Pearsons 1989, p. 22; Markle *et al.* 1991, p. 290; Scheerer and Jones 1997, p. 5; Scheerer *et al.* 2007, p. 3). A minimum of 250 m^2 (0.06 ac) (or between approximately 25 and 100 percent of the total surface area of the habitat) to be covered with aquatic vegetation is needed to provide life-history requirements for a population of 500 Oregon chub (Scheerer 2008e). Aquatic plant communities within Oregon chub habitat include, but are not limited to, both native and nonnative species, including:

1. Emergent vegetation: *Carex* spp. (sedge); *Eleocharis* spp. (spikerush); *Scirpus* spp. (bulrush); *Juncus* spp. (rush); *Alisma* spp. (water plantain); *Polygyonum* spp. (knotweed); *Ludwigia* spp. (primrose-willow); *Salix* spp. (willow); *Sparganium* spp. (bur-reed); and *Typha* spp. (cattail).

2. Partly submerged/emergent vegetation: *Ranunculus* spp. (buttercup).

3. Floating/submerged vegetation: *Azolla* spp. (mosquitofern); *Callitriche* sp. (water-starwort); *Ceratophyllum* sp. (hornwort); *Elodea* spp. (water weed); *Fontinalis* spp. (fontinalis moss); *Lemna* spp. (duckweed); *Myriophyllum* spp. (parrot feather); *Nuphar* spp. (pond-lily); and *Potamogeton* spp. (pondweed) (Scheerer 2008c).

Oregon chub in similar size classes school and feed together. Larval Oregon chub congregate in the upper layers of the water column, especially in shallow, near-shore areas. Juvenile Oregon chub venture farther from shore into deeper areas of the water column. Adult Oregon chub seek dense vegetation for cover and frequently travel in the mid-water column in beaver channels or along the margins of aquatic plant beds. In the early spring, Oregon chub are most active in the warmer, shallow areas of the ponds (Pearsons 1989, pp. 16–17; USFWS 1998, p. 10).

Substrates

Because Oregon chub habitat is characterized by little or no water flow, resulting substrates are typically composed of silty and organic material. In winter months, Oregon chub of various life stages can be found buried in the detritus or concealed in aquatic vegetation (Pearsons 1989, p. 16). Females prefer a highly organic, vegetative substrate for spawning and will lay their adhesive eggs directly on the submerged vegetation (Pearsons 1989, p. 17, 23; Markle *et al.* 1991. p. 290; Scheerer 2007b, p. 494).

Food

Known as obligatory sight feeders (Davis and Miller 1967, p. 32), Oregon chub feed throughout the day and stop feeding after dusk (Pearsons 1989, p. 23). The fish feed mostly on water column fauna, especially invertebrates that live in dense aquatic vegetation. Markle *et al.* (1991, p. 288) found that the diet of Oregon chub adults consisted primarily of minute crustaceans including copepods, cladocerans, and chironomid larvae. The diet of juveniles also consists of minute organisms such as rotifers, copepods, and cladocerans (Pearsons 1989, p. 41–42).

Water Quality

With respect to water quality, the temperature regime at a site may determine the productivity of Oregon chub at that location. Spawning activity for the species has been observed from May through early August when subsurface water temperatures exceed 15 °C (59 °F) or 16 °C (61 °F) (Scheerer and Apke 1997, p. 22; Markle *et al.* 1991, p. 288; Scheerer and MacDonald 2003, p. 78). The species will display normal life-history behavior at temperatures between approximately 15 and 25 °C (59 and 77 °F). The upper lethal temperature for the fish was determined to be 31 °C (88 °F) in laboratory studies (Scheerer and Apke 1997, p. 22).

Optimal Oregon chub habitat contains water with dissolved oxygen levels greater than 3 parts per million (ppm), and an absence of contaminants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; nitrogen and phosphorous fertilizers; and gasoline or diesel fuels. However, the species habitat is also characterized by high primary productivity and frequent algal blooms that might cause natural variability in water quality, especially dissolved oxygen levels (Scheerer and Apke 1997,

p. 15). Optimal Oregon chub habitat includes water dominated by fine substrates, but protected from excessive sedimentation. When excessive sediment is deposited, surface area can be lost as the sediment begins to displace open water. The resulting succession of open water habitat to wet meadow is detrimental to Oregon chub populations (Scheerer 2008c).

The water quality in the habitats of many known extant Oregon chub populations is threatened due to their proximity to areas of human activity. Many of the known extant populations of Oregon chub occur near rail, highway, and power transmission corridors and within public park and campground facilities. These populations may be threatened by chemical spills from overturned truck or rail tankers; runoff or accidental spills of vegetation control chemicals; overflow from chemical toilets in campgrounds; sedimentation of shallow habitats from construction activities; and changes in water level or flow conditions from construction, diversions, or natural desiccation. Oregon chub populations near agricultural areas are subject to poor water quality as a result of runoff laden with sediment, pesticides, and nutrients. Logging in the watershed can result in increased sedimentation and herbicide runoff (USFWS 1998, p. 14).

Reproduction and Rearing of Offspring

Although most mature Oregon chub are found to be greater than or equal to 2 years old, maturity appears to be mainly size- rather than age-dependent (Scheerer and McDonald 2003, p. 78). Males over 35 mm (1.4 in) have been observed exhibiting spawning behavior. Oregon chub spawn from April through September, when temperatures exceed 15 °C (59 °F), with peak activity in July. Approximately 150 to 650 eggs will be released per spawning event, hatching within 10 to 14 days. As described above, females prefer a highly organic, vegetative substrate for spawning and will lay their adhesive eggs directly on the submerged vegetation (Pearsons 1989, p. 17, 23; Markle *et al.* 1992, p. 290; Scheerer 2007b, p. 494). Larvae and juveniles seek dense cover in shallow, warmer regions of off-channel habitats (Pearsons 1989, p. 17; Scheerer 2007b, p. 494).

Habitats Protected From Disturbance

Nonnative Fish

Many species of nonnative fish that compete with or prey upon Oregon chub have been introduced and are common throughout the Willamette Valley, including largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), crappie (*Pomoxis* sp.), bluegill (*Lepomis macrochirus*), and western mosquitofish (*Gambusia affinis*). Of the 747 Willamette Valley sites sampled for Oregon chub by ODFW since the beginning of annual survey efforts by the agency in 1991, 42 percent contained nonnative fish. Most of the habitats surveyed that supported large populations of Oregon chub had no evidence of nonnative fish presence (Scheerer 2002, p. 1078; Scheerer 2007a, p. 96; Scheerer *et al.* 2007, p. 14). The presence of nonnative fish in the Willamette Valley, especially centrarchids (*e.g.*, basses and crappie) and ictalurids (catfishes) is suspected to be a major factor in the decline of Oregon chub and the biggest threat to the species' recovery (Markle *et al.* 1991, p. 291; Scheerer 2002, p. 1078; Scheerer *et al.* 2007, p. 18).

Specific interactions responsible for the exclusion of Oregon chub from habitats dominated by nonnative fish are not clear in all cases. While information confirming the presence of Oregon chub in stomach contents of predatory fish is lacking, many nonnative fish, particularly adult centrarchids and ictalurids are documented piscivores (fish eaters) (Moyle 2002, pp. 397, 399, 403; Wydoski and Whitney 2003, pp. 125, 128, 130; Li *et al.* 1987, pp. 198–201). These fish are frequently the dominant inhabitants of ponds and sloughs within the Willamette River drainage and may constitute a major obstacle to Oregon chub recolonization efforts. Nonnative fish may also serve as sources of parasites and diseases; however, disease and parasite problems have not been studied in the Oregon chub.

Observed feeding strategies and diet of introduced fish, particularly juvenile centrarchids and adult mosquitofish (Li *et al.* 1987, pp. 198–201), often overlap with diet and feeding strategies described for Oregon chub (Pearsons 1989, pp. 34–35). This suggests that direct competition for food between Oregon chub and introduced species may further impede species survival as well as recovery efforts. The rarity of finding Oregon chub in waters also inhabited by mosquitofish may reflect many negative interactions, including but not limited to food-based competition, aggressive spatial exclusion, and predation on eggs and larvae (Meffe 1983, pp. 316, 319; 1984, pp. 1,530–1,531). Because many remaining population sites are easily accessible, there continues to be a potential for unauthorized introductions of nonnative fish, particularly mosquitofish and game fish such as bass and walleye (*Stizostedion vitreurn*).

The bullfrog (*Rana catesbiana*), a nonnative amphibian, also occurs in the valley and breeds in habitats preferred by the Oregon chub (Bury and Whelan 1984, pp. 2–3; Scheerer 1999, p. 7). Adult bullfrogs prefer habitat similar in characteristics (*i.e.*, little to no water velocity, abundant aquatic and emergent vegetation) to the preferred habitat for Oregon chub, and are known to consume small fish as part of their diet (Cohen and Howard 1958, p. 225; Bury and Whelan 1984, p. 3), but it is unclear if they have a negative impact on Oregon chub populations, as several sites that have large numbers of bullfrogs also maintain robust Oregon chub populations (Scheerer 2008d).

Flood Control

Major alteration of the Willamette River for flood control and navigation improvements has eliminated most of the river's historical floodplain, impairing or eliminating the environmental conditions in which the Oregon chub evolved. The decline of Oregon chub has been correlated with the construction of these projects based on the date of last capture at a site (58 FR 53801; October 18, 1993). Pearsons (1989, pp. 32–33) estimated that the most severe decline occurred during the 1950s and 1960s when 8 of 11 flood control projects in the Willamette River drainage were completed (USACE 1970, pp. 219–237). Other structural changes along the Willamette River corridor such as revetment and channelization, dike construction and drainage, and the removal of floodplain vegetation have eliminated or altered the slack water habitats of the Oregon chub (Willamette Basin Task Force 1969, pp. I9, II22–II24; Hjort *et al.* 1984, pp. 67–68, 73; Sedell and Froggatt 1984 pp. 1,832–1,833; Li *et al.* 1987, p. 201). Management of water bodies (such as reservoirs) adjacent to occupied Oregon chub habitat continues to impact the species by causing fluctuations in the water levels of their habitat such that it may exceed or drop below optimal water depths.

Primary Constituent Elements for the Oregon Chub

Pursuant to our regulations, we are required to identify the known physical and biological features, called primary constituent elements (PCEs), essential to the conservation of the Oregon chub and which may require special management considerations or protections. All areas proposed as critical habitat for Oregon chub are either occupied or within the species' historical geographic range.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the characteristics of the habitat necessary to sustain the essential life-history functions of the species, we have identified four PCEs for Oregon chub critical habitat:

1. Off-channel water bodies such as beaver ponds, oxbows, side-channels, stable backwater sloughs, low-gradient tributaries, and flooded marshes, including at least 500 continuous square meters (5,400 square feet) of aquatic surface area at depths between approximately 0.5 and 2.0 m (1.6 and 6.6 ft).

2. Aquatic vegetation covering a minimum of 250 m^2 (0.06 ac) (or between approximately 25 and 100 percent) of the total surface area of the habitat. This vegetation is primarily submergent for purposes of spawning, but also includes emergent and floating vegetation, and algae which is important for cover throughout the year. Areas with sufficient vegetation are likely to also have the following characteristics:

- Gradient less than 2.5 percent;
- No or very low water velocity in late spring and summer;
- Silty, organic substrate; and
- Abundant minute organisms such as rotifers, copepods, cladocerans, and chironomid larvae.

3. Late spring and summer subsurface water temperatures between 15 and 25 °C (59 and 78 °F), with natural diurnal and seasonal variation.

4. No or negligible levels of nonnative aquatic predatory or competitive species. Negligible is defined for the purpose of this proposed rule as a minimal level of nonnative species that will still allow the Oregon chub to continue to survive and recover.

The need for space for individual and population growth and normal behavior is met by PCE (1); areas for reproduction, shelter, food, and habitat for prey are provided by PCE (2); optimal physiological processes for spawning and survival are ensured by PCE (3); habitat free from disturbance and, therefore, sufficient reproduction and survival opportunities is provided by PCE (4).

This proposed designation is designed for the conservation of PCEs necessary to support the life-history functions that were the basis for the proposal. Each of the areas proposed in this rule has been determined to contain sufficient PCEs to provide for one or more of the life-history functions of the Oregon chub. Specifically, these areas fall into two groups: areas occupied at time of listing containing PCEs sufficient for one or more life-history functions, and areas not occupied at time of listing but that are essential to the conservation of the species and that also contain PCEs for one or more life-history functions.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Oregon chub. The steps we followed in identifying critical habitat were:

1. Our initial step in identifying critical habitat was to determine, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features (PCEs) that are essential to the conservation of the species as explained in the previous section.

2. We then identified areas occupied by the Oregon chub at the time of listing. Of the 5 populations known at the time of the 1993 listing (58 FR 53801), and the 12 additional sites confirmed by post-listing survey data to be occupied with one or more Oregon chub at the time of listing, 10 still support Oregon chub (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 2) and contain at least one PCE.

3. Since, based on the recovery plan criteria described above, we found that areas occupied at time of listing were not sufficient to conserve the species, the next step was the identification of any additional sites that were not occupied at the time of listing, but that are currently occupied and contain PCEs, and which may be essential for the conservation of the species. Surveys conducted in 2007 and 2008 indicate that 15 additional sites are currently occupied with one or more Oregon chub (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 2).

4. Next we identified sites that support introduced populations that also contain the PCEs, and which may be essential for the conservation of the species, which resulted in 11 additional sites being identified (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 2). Collectively, the above efforts resulted in the identification of 36 occupied sites that met the above criteria.

5. Our final step was to evaluate the 36 occupied sites within the context of the 1998 Oregon Chub Recovery Plan, to determine which areas contained the physical and biological features in the amount and spatial configuration essential to the conservation of the species. This step involved the application of the following criteria:

- Sites that support large, stable populations: From the list of occupied sites that contain PCEs, we selected sites that support populations meeting the delisting population criteria outlined in the 1998 Recovery Plan (i.e., establishing 20 populations of at least 500 adults with a stable or increasing trend over seven years (USFWS 1998, p. 28)), and also sites that are likely to meet the delisting criteria in the near future. Of the 18 sites meeting this selection criterion, 9 sites were occupied at the time of listing:
  - Unit 2B(5), Finley Gray Creek Swamp
  - Unit 3B, Elijah Bristow State Park—Berry Slough
  - Unit 3E, Dexter Reservoir RV Alcove—DEX3
  - Unit 3F, Dexter Reservoir Alcove—PIT1
  - Unit 3G, East Fork Minnow Creek Pond
  - Unit 3H, Hospital Pond
  - Unit 3I, Shady Dell Pond
  - Unit 3J, Buckhead Creek, and
  - Unit 3K, Wicopee Pond.

  Three other sites supported naturally occurring populations but were not occupied at the time of listing:
  - Unit 1B(1), Geren Island North Channel
  - Unit 1B(4), Gray Slough, and
  - Unit 3D, Elijah Bristow State Park Island Pond.

  In addition, six sites supported introduced populations:
  - Unit 1C, Foster Pullout Pond
  - Unit 2A(1), Russell Pond
  - Unit 2B(1), Ankeny Willow Marsh
  - Unit 2B(2), Dunn Wetland
  - Unit 2B(4), Finley Cheadle Pond, and
  - Unit 3A, Fall Creek Spillway Ponds.
- Sites that are capable of supporting large populations: Because the 1998 Recovery Plan for Oregon chub calls for establishing and maintaining a minimum of 20 populations that meet the recovery criteria, we identified seven currently occupied sites not already selected under the first criterion (above) that have the greatest potential to contribute to the long-term conservation and recovery of the species. Sites meeting this selection criterion include five sites that support naturally occurring populations: Unit 1A, Santiam I–5 Side Channels; Unit 1B(2), Stayton Public Works Pond; Unit 2A(2), Shetzline Pond; Unit 2A(3), Big Island; and Unit 3C, Elijah Bristow State Park Northeast Slough. In addition two sites that support introduced populations met this criterion: Unit 1B(3), South Stayton Pond; and Unit 2B(3), Finley Display Pond. Each of these sites either currently, or in the past, has supported populations of over 500 adults.

• Sites representative of the geographic distribution of Oregon chub: The delisting criteria outlined in the 1998 Recovery Plan require that at least four populations be located in each of three sub-basins. We determined that the 25 sites selected under the preceding critical habitat criteria also met this objective (USFWS 1998, p. 28). Six units are being proposed as critical habitat in the Santiam River watershed, 8 sites are being proposed as critical habitat in the Mainstem Willamette River watershed, and 11 sites are being proposed as critical habitat in the Middle Fork Willamette River watershed. By protecting a variety of habitats throughout the species' historical range, we increase the probability that the species can adjust in the future to various limiting factors that may affect the population, such as predators, disease, and flood events exceeding annual high water levels.

Based on this analysis, we are proposing to designate 25 units as critical habitat. Although the 1998 recovery plan calls for establishing and maintaining a minimum of 20 populations, we believe that establishing additional populations will allow the Service to mitigate the potential that some units may become unable to support the species or primary constituent elements over time because of predation issues or other factors.

After applying the above criteria, we mapped the critical habitat unit boundaries at each of these 25 sites. Mapping was completed using a Geographic Information System (GIS), and involved several steps. Critical habitat unit boundaries were delineated to encompass the extent of habitat containing the physical and biological features essential to the conservation of the species that may require special management considerations or protection. Polygon vertices (points where two lines meet) were collected along the annual high water mark at least every 30 meters (98 ft) around the perimeter of the site, and at a greater frequency in areas of complexity or where higher resolution was necessary. The full extent of each pond or slough was mapped; islands were mapped with the same method as the perimeter of the site. At sites where tributaries or channels entered or exited a site, only the extent of suitable Oregon chub habitat was mapped. The extent of chub use in open systems was defined by habitat features and by previous experience sampling in those areas. Habitat features that defined the limit of Oregon chub use in a channel included increased gradient, the absence of aquatic vegetation, and areas where gravel, cobble, or other large substrate was present. We combined the polygon data with information from aerial photos to determine the proposed critical habitat unit boundaries of each site.

Special Management Considerations or Protections

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographic areas on which are found those physical or biological features essential to the conservation of the species and ''which may require special management considerations or protections.'' Accordingly, in identifying critical habitat in occupied areas, we assess whether the primary constituent elements within the areas determined to be occupied at the time of listing may require any special management considerations or protections. Although the determination that special management may be required is not a prerequisite to designating critical habitat in areas essential to the conservation of the species that were unoccupied at the time of listing, all areas being proposed as critical habitat require some level of management to address current and future threats to the Oregon chub, to maintain or enhance the physical and biological features essential to its conservation, and to ensure the recovery and survival of the species.

The primary threats impacting the physical and biological features essential to the conservation of the Oregon chub that may require special management considerations within the proposed critical habitat units include: Competition and predation by nonnative fish; the potential for initial or further introduction of nonnative fish; vegetative succession of shallow aquatic habitats; possible agricultural chemical runoff; possible excessive siltation from logging in the watershed; other threats to water quality (including threat of toxic spills, low dissolved oxygen); and fluctuations in water levels due to regulated flow management at flood control dams, as well as low summer water levels.

Some additional threats to the continued survival and recovery of the Oregon chub, such as the potential for reduced genetic diversity due to the low level of mixing between populations, will likely be addressed by direct management of populations (e.g., translocation of individuals) rather than by management of the physical and biological features of the habitat. Such threats, therefore, are not addressed in this section specific to the special management required of the physical and biological features of the proposed critical habitat areas.

Special management considerations or protections are needed in most of the units to address the impacts of competition and predation by nonnative fishes in Oregon chub habitat or to avoid the potential introduction of nonnative fishes into areas occupied by Oregon chub. Predatory nonnative fishes are considered the greatest current threat to the recovery of the Oregon chub. Management for the Oregon chub has focused on establishing secure, isolated habitats free of nonnative fishes. Nonnative fishes are abundant and ubiquitous in the Willamette River Basin, and monitoring and management are required to remove nonnative fishes from Oregon chub habitat when possible, and to protect Oregon chub populations that have not yet been affected by nonnative fishes from invasion.

Special management is needed to reduce or eradicate the threat posed by nonnative fishes already present in the following proposed units:

• Unit 1A Santiam I–5 Side Channels
• Unit 1B(1) Geren Island North Channel
• Unit 1B(2) Stayton Public Works Pond
• Unit 1B(4) Gray Slough, Unit 2B(5) Finley Gray Creek Swamp
• Unit 3C Elijah Bristow State Park—NE Slough
• Unit 3D Elijah Bristow State Park Island Pond, and
• Unit 3F Dexter Reservoir Alcove—PIT1.

Special management or protections are needed to prevent the introduction or further introduction of nonnative fishes into the following proposed units:

• Unit 1A Santiam I–5 Side channels
• Unit 1B(2) Stayton Public Works Pond
• Unit 1B(3) South Stayton Pond
• Unit 1B(4) Gray Slough
• Unit 1C Foster Pullout Pond
• Unit 2A(2) Shetzline Pond
• Unit 2A(3) Big Island
• Unit 2B(1) Ankeny Willow Marsh
• Unit 2B(3) Finley Display Pond
• Unit 2B(4) Finley Cheadle Pond
• Unit 2B(5) Finley Gray Creek Swamp
• Unit 3A Fall Creek Spillway Ponds
• Unit 3B Elijah Bristow State Park—Berry Slough
• Unit 3C Elijah Bristow State Park—Northeast Slough
• Unit 3D Elijah Bristow State Park Island Pond
• Unit 3E Dexter Reservoir RV Alcove—DEX3
• Unit 3F Dexter Reservoir Alcove—PIT1, Unit 3H Hospital Pond

- Unit 3I Shady Dell Pond, and
- Unit 3J Buckhead Creek.

Although Oregon chub require some aquatic vegetation for cover and spawning, some areas of Oregon chub habitat are threatened by succession to wet meadow systems due to a lack of natural disturbance (such as floods) or excessive siltation. If vegetation completely fills in the open water areas of Oregon chub habitat, these areas are no longer suitable for the Oregon chub. Special management is required to prevent or set back vegetative succession in Unit 3G, East Fork Minnow Creek Pond, to alleviate this threat to the Oregon chub's aquatic habitat.

Some units require special management to avoid the degradation of water quality in Oregon chub habitats due to agricultural chemical runoff. Elevated levels of nutrients and pesticides have been found in some Oregon chub habitats (Materna and Buck 2007, p. 67). The source of the contamination is likely agricultural runoff from adjacent farm fields (Materna and Buck 2007, p. 68). Special management will be needed to reduce the incursion of potentially hazardous agricultural chemicals into Oregon chub habitats and maintain water quality in Units 1B(4) Gray Slough, Unit 2B(2) Dunn Wetland, and Unit 2B(4) Finley Cheadle Pond.

Although Oregon chub utilize fine silty substrates, an overabundance of siltation resulting from activities such as logging poses a threat to Oregon chub habitat by filling in the shallow aquatic areas utilized by the species. Excess sedimentation can also lead to the succession of open water habitats to wet meadow, as discussed above. Special management to alleviate the threat posed by excess watershed siltation due to logging and other activities is needed in Unit 1B(1) Geren Island North Channel, Unit 2A(1) Russell Pond, Unit 2B(5) Finley Gray Creek Swamp, Unit 3G East Fork Minnow Creek Pond, Unit 3J Buckhead Creek, and Unit 3K Wicopee Pond.

Special management is required in several of the proposed critical habitat units to maintain the water quality required by Oregon chub and protect against the impacts of several potential threats to water quality. Many Oregon chub populations occur near rail, highway, and power transmission corridors, agricultural fields, and within public park and campground facilities, and there is concern that these populations could be threatened by chemical spills, runoff, or changes in water level or flow conditions caused by construction, diversions, or natural desiccation (58 FR 53800, U.S. Fish and Wildlife Service 1998, p. 14). Water quality investigations at sites in the Middle Fork and Mainstem Willamette subbasins have found some adverse effects to Oregon chub habitats caused by changes in nutrient levels. Elevated nutrient levels at some Oregon chub locations, particularly increased nitrogen and phosphorus, may result in eutrophication and associated anoxic conditions unsuitable for chub, or increased plant and algal growth that severely reduce habitat availability (Buck 2003, p. 12). Monitoring and special management are needed to ameliorate the effects of excessive nutrient levels in Oregon chub habitats, as well as provide protection against accidental sources of contamination to the extent possible, in the following units:

- Unit 1A Santiam I–5 Side Channels
- Unit 2B(5) Finley Gray Creek Swamp
- Unit 3E Dexter Reservoir RV Alcove—DEX3
- Unit 3F Dexter Reservoir Alcove—PIT1
- Unit 3G East Fork Minnow Creek Pond
- Unit 3H Hospital Pond
- Unit 3I Shady Dell Pond, and
- Unit 3J Buckhead Creek.

Although the Oregon chub evolved in a dynamic environment in which frequent flooding continually created and reconnected habitat for the species, currently most populations of Oregon chub are isolated from each other due to the reduced frequency and magnitude of flood events and the presence of migration barriers such as impassable culverts and beaver dams (Scheerer *et al.* 2007, p. 9). Historically, regulated flow management of flood control dams eliminated many of the slough and side channel habitats utilized by Oregon chub by reducing the magnitude, extent, and frequency of flood events in the Willamette River Basin. Currently, flow management activities impact Oregon chub in many of their remaining habitats by inadvertently raising or lowering the depth of water bodies to levels above or below the optimum for the species. Water depths in the summer may be reduced to levels that threaten the survival of Oregon chub due to flow management in adjacent reservoirs or rivers, or from natural drought cycles. Special management is required to ameliorate the effects of fluctuating or reduced water levels for the Oregon chub in:

- Unit 1A Santiam I–5 Side Channels
- Unit 1B(1) Geren Island North Channel
- Unit 1B(2) Stayton Public Works Pond
- Unit 1B(4) Gray Slough
- Unit 2A(3) Big Island
- Unit 2B(5) Finley Gray Creek Swamp
- Unit 3A Fall Creek Spillway Ponds
- Unit 3C Elijah Bristow State Park—Northeast Slough
- Unit 3D Elijah Bristow State Park Island Pond
- Unit 3E Dexter Reservoir RV Alcove—DEX3
- Unit 3F Dexter Reservoir Alcove—PIT1, and
- Unit 3I Shady Dell Pond.

In summary, we find that each of the areas we are proposing as critical habitat contains features essential to the conservation of the Oregon chub, and that these features may require special management considerations or protection. These special management considerations and protections are required to eliminate, or reduce to a negligible level, the threats affecting each unit and to preserve and maintain the essential features that the proposed critical habitat units provide to the Oregon chub. A more comprehensive discussion of threats facing individual sites is in the individual unit descriptions.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Oregon chub. Federal activities that may affect those unprotected areas outside of critical habitat are still subject to review under section 7 of the Act if they may affect Oregon chub. The prohibitions of section 9 against the take of listed species also continue to apply both inside and outside of designated critical habitat. Take is broadly defined in the Act as to harass, harm, wound, kill, trap, capture, or collect a listed species, or to attempt to engage in any such conduct.

Proposed Critical Habitat Designation

The areas we are proposing as critical habitat currently provide all habitat components necessary to meet the primary biological needs of the Oregon chub, as defined by the primary constituent elements. The areas proposed for designation are those areas most likely to substantially contribute to conservation of the Oregon chub, and when combined with future management of certain habitats suitable for restoration efforts, will contribute to the long-term survival and recovery of the species.

Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when

(1) the inclusion of specific areas occupied at the time of listing defined by the essential physical and biological factors are not sufficient to conserve the species; and (2) we determine that those areas outside the geographical area occupied by the species are essential for the conservation of the species.

We have determined that 25 units totaling approximately 53 ha (132 acres) meet our definition of critical habitat for the Oregon chub, including land under State, Federal, other government, and private ownership. Nine of the critical habitat units described below constitute our best assessment of areas determined to be occupied at the time of listing that contain the primary constituent elements and require special management (units 2B(5), 3B, 3E, 3F, 3G, 3H, 3I, 3J, 3K). Because the nine occupied units do not alone contain physical and biological features sufficient to conserve the species, we are proposing an additional 16 units. The other 16 proposed units constitute our best assessment of areas that were not occupied or not known to be occupied at the time of listing but were within the species' historical range, which were found to be essential to the conservation of the Oregon chub. These additional areas include natural and introduced populations. The *Critical Habitat Selection Criteria* and *Special Management Considerations or Protections* sections above address why the inclusion of specific areas occupied at the time of listing defined by the essential physical and biological factors are not sufficient to conserve the species; and, for the additional 16 proposed units, why we determine that those areas outside the geographical area occupied by the species are essential for the conservation of the species.

Area 1: Santiam River Basin—Linn and Marion Counties, Oregon

A. Mainstem

Unit 1A, the Santiam I–5 Side Channels: This site consists of three ponds totaling 1.4 ha (3.3 ac), located on a 27-ha (66-ac) property on the south side of the Santiam River upstream of the Interstate Highway 5 bridge crossing in Linn County, Oregon. The areas containing Oregon chub include a small backwater pool, a gravel pit, and a side channel pond. This unit is owned by the Oregon Department of Transportation (ODOT) and Oregon chub were first observed here in 1997. Although only 22 Oregon chub were counted at the site in 2007, the habitat contains 3 of the 4 PCEs and has exhibited capability of supporting a substantial population of the species based on past survey population estimates of over 500 individuals. The maximum water depth is approximately 3 m (9.8 ft), averaging 1.5 m (4.9 ft), and the temperature was recorded at between 19.5 and 21 °C (60 and 67 °F) on July 30, 2008. The substrate is composed of 80 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 65 percent of the surface area. Beaver have been observed at this location. This site is at risk of the vegetation expanding to levels detrimental to Oregon chub habitat. The site is periodically connected to the Santiam River, and its water levels can be affected by hydrologic changes in the river, particularly the low summer levels common in the drainage. Competing and predatory nonnative species have been observed; nonnative predators are suspected to be a major factor in the drop in Oregon chub population estimates at this site between the 2006 and 2007 surveys (Scheerer 2008d).

B. North

Unit 1B(1), Geren Island North Channel: This site totals approximately 0.8 ha (1.9 ac) and is located on the grounds of a water treatment facility owned by the City of Salem in Marion County, Oregon. The species was first observed at this site in 1996. Although only 207 Oregon chub were counted at the site in 2008, the habitat contains 3 of the 4 PCEs and has exhibited capability of supporting a substantial population of the species based on past survey population estimates of over 500 individuals. The maximum water depth is 2.2 m (7.2 ft), averaging 1.8 m (5.9 ft), and the temperature was recorded at 26 °C (79 °F) on July 10, 2008. The substrate is composed of 90 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 65 percent of the surface area. Beaver have been observed at this location. The site is screened and isolated from other water bodies, but water levels are influenced through water releases at Detroit and Big Cliff Dams. Competing and predatory nonnative species have been observed at the site. There is also a risk of excess sedimentation due to logging in the watershed.

Unit 1B(2), the Stayton Public Works Pond: This site totals approximately 0.4 ha (1.0 ac) and is located in and owned by the City of Stayton, in Marion County, Oregon. The species was first observed at this location in 1998. Although only 68 Oregon chub were counted at the site in 2008, the habitat contains 3 of the 4 PCEs and has exhibited capability of supporting a substantial population of the species based on past survey population estimates of over 500 individuals. The maximum water depth is 2 m (6.6 ft) deep, averaging 1.2 m (3.9 ft), and the temperature was recorded at 25.5 °C (77.9 °F) on July 9, 2008. The substrate is composed of 90 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 100 percent of the surface area. Beaver have also been observed at this location. The site is periodically connected to the North Santiam River and is therefore at risk of low summer water levels and nonnative fish introduction. Competing and predatory nonnative species have been observed at this site.

Unit 1B(3), South Stayton Pond: This site totals approximately 0.1 ha (0.2 ac), is located in Linn County, Oregon, and is owned by the Oregon Department of Fish and Wildlife (ODFW). This site was the location of a 2006 introduction of 54 Oregon chub and a supplemental 2007 introduction of 67 additional individuals. The population is currently estimated at 1,705 individuals and appears to be stable or increasing. The habitat contains all of the PCEs. The maximum water depth is 1.6 m (5.3 ft), averaging 0.9 m (3 ft), and the temperature was recorded at 24.5 °C (76.1 °F) on July 9, 2008. The substrate is composed of 90 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 100 percent of the surface area. The site is isolated from other water bodies and currently has no competing or predatory nonnative species. Because of the easy public access to the site, it may be at risk of illegal introduction of nonnative fish.

Unit 1B(4), Gray Slough: This privately owned site totals approximately 2.5 ha (6.2 ac) and is in Marion County, Oregon. The species was first observed at this site in 1995. The population is currently estimated at 655 individuals, has been stable for 5 years, and the habitat contains 3 of the 4 PCEs. The maximum water depth is 2.5 m (8.2 ft), averaging 1.2 m (3.9 ft), and the temperature was recorded at 23.5 °C (74.3 °F) on July 31, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 55 percent of the surface area. Beaver, and also competing or predatory nonnative fish species, have been observed at this location. The site is periodically connected to the North Santiam River and is therefore at risk of low summer water levels and additional nonnative fish invasion. The

site's location on a property with agricultural activity places it at risk of chemical runoff.

C. South

Unit 1C, Foster Pullout Pond: This site totals 0.4 ha (1.0 ac), and is owned by the United States Army Corps of Engineers (USACE). The pond is located in Linn County, Oregon, on the north shore of Foster Reservoir in the South Santiam River drainage. The pond is perched several meters above the reservoir full pool level, is spring-fed, and the water level is maintained by a beaver dam at the outflow. This site was the location of a 1999 introduction of 85 Oregon chub, and the population is currently estimated at 2,636 individuals. The population has been stable for 5 years, and the habitat contains all of the PCEs. The maximum water depth is 2.0 m (6.6 ft), averaging 1.2 m (3.9 ft), and the temperature was recorded at 21 °C (70 °F) on July 23, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent vegetation covering 100 percent of the surface area. Beaver have been observed at this location. The site is isolated from other water bodies and has no competing or predatory nonnative species, but the site's accessibility to the public raises the risk of illegal introduction of nonnative fish.

Area 2: Mainstem Willamette River Basin-Benton, Lane and Marion Counties, Oregon

A. McKenzie River

Unit 2A(1), Russell Pond: This privately owned site totals approximately 0.1 ha (0.1 ac) and is located in the Mohawk River drainage, Lane County, Oregon. In 2001, 350 Oregon chub were introduced into the pond, followed by an additional introduction of 150 individuals in 2002 as part of a Safe Harbor Agreement with the Service. The population is currently estimated at 651 individuals, has been stable for 5 years, and the habitat contains all of the PCEs. The maximum water depth is 2 m (6.6 ft), averaging 1.5 m (4.9 ft), and the temperature was recorded at 18.5 °C (65.3 °F) on July 23, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 40 percent of the surface area. The site is isolated from other water bodies, and has no competing or predatory nonnative species. Threats to the site include possible excess sedimentation resulting from logging in the watershed.

Unit 2A(2), Shetzline Pond: This privately owned site totals approximately 0.1 ha (0.3 ac), and is in the Mohawk River drainage, Lane County, Oregon. The species was first observed at this site in 2002. The site originally consisted of three manmade ponds, one of which (the south pond) contained Oregon chub. A restoration project was conducted in 2006 in the north and middle ponds to connect the ponds and create a more natural wetland. Nonnative fish in these ponds were removed with a rotenone treatment. However, to date the restored wetland has not been connected to the Oregon chub pond, although the site has a small inflow channel connecting it to Drury Creek (a tributary of the Mohawk River). Although only 130 Oregon chub were counted at the site in 2008, the habitat contains all of the PCEs and has exhibited capability of supporting a substantial population of the species, based on past survey population estimates of over 500 individuals. The maximum water depth is 2.5 m (8.2 ft), averaging 2 m (6.6 ft), and the temperature was recorded at 20 °C (68 °F) on July 23, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 100 percent of the surface area. The site currently has no competing or predatory nonnative species but, because of previous fishing for nonnative species that was allowed in the ponds, the site is at risk of illegal introduction of nonnative fish.

Unit 2A(3), Big Island: This site totals 3.3 ha (8.2 ac), is owned by the McKenzie River Trust, and is located along the McKenzie River in Lane County, Oregon. The species was first observed at this location in 2002. Although only 200 Oregon chub were counted at the site in 2008, the habitat contains all of the PCEs and has exhibited capability of supporting a substantial population of Oregon chub based on past survey population estimates of over 500 individuals. The maximum depth is 1.5 m (4.9 ft) deep, averaging 0.6 m (2.0 ft), and the temperature was recorded at 19 °C (66 °F) on July 23, 2008. The substrate is composed of 90 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 72 percent of the surface area. Beaver have been observed at this location. Because the site has annual connectivity to the McKenzie River, its water levels can be affected by hydrologic changes in the river and it is at risk of the introduction of nonnative fish. No competing or predatory nonnative species have been observed to date.

B. Willamette River Mainstem

Unit 2B(1), Ankeny Willow Marsh: This site totals 14.0 ha (34.5 ac), and is located in Marion County, Oregon at the Ankeny National Wildlife Refuge where an introduction of 500 Oregon chub took place in 2004. The population is currently estimated at 36,455 individuals and has been increasing. The habitat also contains all of the PCEs. The maximum depth is 2 m (6.6 ft), averaging 0.7 m (2.3 ft), and the temperature at the site was recorded at 25 °C (77 °F) on July 8, 2008. The substrate is composed of 100 percent silt and organic material and there is a variety of aquatic vegetation including emergent, submergent, floating and algae covering 100 percent of the surface area. Beaver and turtles have been observed at this location. Water is supplied to the pond from Sidney Ditch, which contains nonnative fish. The pump is screened, and the site currently has no competing or predatory nonnative species, although a high water event could foster the introduction of nonnative fish.

Unit 2B(2), Dunn Wetland: This privately owned site in Benton County, Oregon, totals 6.1 ha (15.2 ac). In 1997, 200 Oregon chub were introduced to the site, followed by the introduction of 373 additional individuals in 1998 as part of a Safe Harbor Agreement with the Service. The owners restored the wetland in 1994 when a permanent (year round) spring-fed pond was constructed. Two additional permanent ponds were constructed in 1997 and 1999. The entire wetland floods during the winter, and the ponds are interconnected. The population is currently estimated at 34,530 individuals and has been stable for 5 years. The habitat contains all of the PCEs. The maximum depth is 1 m (3.3 ft), averaging 0.6 m (2.0 ft), and the temperature was recorded at 23 °C (73 °F) on July 28, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 100 percent of the surface area. Beaver have been observed at this location. The site is isolated from other water bodies and has no competing or predatory nonnative species, but it is at risk of chemical runoff from agricultural activities.

Unit 2B(3), Finley Display Pond: This site totals 1.0 ha (2.4 ac) and is located in Benton County, Oregon, on the William L. Finley National Wildlife Refuge. This unit was the subject of

several introductions of Oregon chub: 60 in 1998, 45 in 1999, 49 in 2001, and 75 in 2007. The current population estimate of 832 individuals along with past survey population estimates of over 500 individuals establish the site's capability of supporting a substantial population of the species. The habitat contains all of the PCEs. The maximum depth is 2.5 m (8.2 ft), averaging 1.5 m (4.9 ft), and the temperature was recorded at 19 °C (66 °F) on June 20, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 75 percent of the surface area. While this pond currently has no competing or predatory nonnative species, easy public access makes it vulnerable to illegal introductions of nonnative fish. Beaver have been observed at this location.

Unit 2B(4), Finley Cheadle Pond: This site totals 0.9 ha (2.3 ac) and is located in Benton County, Oregon, on the William L. Finley National Wildlife Refuge. In 2002, 50 Oregon chub were introduced to this unit, followed by the introduction of 53 additional individuals in 2007. The population is currently estimated at 3,519 individuals, has been stable or increasing for 5 years, and the habitat contains all of the PCEs. The maximum depth is 3.3 m (10.8 ft), averaging 1.5 m (4.9 ft), and the temperature was recorded at 18.5 °C (65.3 °F) on June 20, 2008. The substrate is composed of 100% silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 86 percent of the surface area. The site is isolated from other water bodies and has no competing or predatory nonnative species. Beaver have been observed at this location. The pond's proximity to agricultural areas puts it at risk of chemical runoff and easy public access makes it vulnerable to illegal introductions of nonnative fish.

Unit 2B(5), Finley Gray Creek Swamp: This site totals 3.0 ha (7.4 ac) and is located in Benton County, Oregon. Most of the unit is located on the southwest corner of the William L. Finley National Wildlife Refuge, however, a small portion of the unit is located on private property. The site was occupied by Oregon chub at the time of listing and the population is currently estimated at 2,141 individuals and has been stable for 5 years. The habitat contains 3 of the 4 PCEs. The maximum depth is 2.2 m (7.2 ft), averaging 1 m (3.3 ft), and the temperature was recorded at 22 °C (72 °F) on July 28, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 100 percent of the surface area. Beaver have also been observed at this location. The site is periodically connected to other water bodies, and competing and predatory nonnative species have been observed. Gray Creek originates on the slopes west of Bellfountain Road, an area owned by private timber companies. The creek flows under Bellfountain Road onto Finley NWR where three dikes have been constructed to form Beaver Pond, Cattail Pond and Cabell Marsh. The waters of Gray Creek empty into Muddy Creek which drains into the Willamette River south of Corvallis. Extensive damming by beavers occurs between Bellfountain Road and the first dike at Beaver Pond, creating a narrow band of marsh habitat less than 1 mile in length, with a silty, detritus-laden substrate. The refuge boundary in this area is irregular, and portions of the marsh are within the refuge boundary while other portions are located on private land. Steep, forested slopes rise up on either side of the marsh; the north slope is refuge land, while a large portion of the southern slope is private land. The creek's location put the habitat at risk of excess sedimentation from logging activities and other water quality issues, including threat of spills and low dissolved oxygen.

Area 3: Middle Fork Willamette River Basin—Lane County, Oregon

Unit 3A, Fall Creek Spillway Ponds: This site totals 1.5 ha (3.8 ac), is owned by the USACE, and is the location of a 1996 introduction of 500 Oregon chub. The ponds, located in the overflow channel below Fall Creek Dam, were formed by beaver dams that blocked the spillway overflow channel. The current Oregon chub population estimate of 3,052 individuals along with past survey population estimates of over 500 individuals establish the site's capability of supporting a substantial population of the species. The habitat contains all of the PCEs. The maximum water depth is 1.8 m (5.9 ft), averaging 0.7 m (2.3 ft), and the temperature was recorded at 23.5 °C (74.3 °F) on July 2, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 89 percent of the surface area. Because the site is supplied with water from seepage out of Fall Creek Reservoir spillway and flows into Fall Creek, it is at risk of impacts from flow management for flood control and low summer water levels. Although the site currently has no competing or predatory nonnative species, it is at risk of nonnative fish introduction if flood control measures at the Dam cause reservoir water to infiltrate the ponds.

Unit 3B, Elijah Bristow State Park Berry Slough: This site totals 5.2 ha (12.7 ac) measured at the annual high-water elevation, is owned by the Oregon Parks and Recreation Department (OPRD), and was occupied by Oregon chub at the time of listing. Berry Slough appears to be an abandoned river channel consisting of a chain of shallow ponds connected by a spring-fed flow of several cubic feet per second, entering the Middle Fork Willamette River about 4.0 kilometers (km) (2.5 miles (mi)) below Dexter Dam. Almost the entire 1.6-km (1-mile) length of the slough lies within Elijah Bristow State Park. The population is currently estimated at 5,459 individuals, and has been stable for 5 years, and the habitat contains all of the PCEs. The maximum water depth is 2.5 m (8.2 ft), averaging 1.2 m (3.9 ft), and the temperature was recorded at between 20 and 25 °C (68 and 77 °F) on July 16, 17, and 29, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 100 percent of the surface area. The upper portion (beaver pond) at the site is isolated from other water bodies during most high-water events by a beaver dam and has no competing or predatory nonnative species. The site's connection to the Middle Fork Willamette River creates the risk of nonnative fish introduction and threatens fluctuations in the site's water level due to hydrologic changes in the river.

Unit 3C, Elijah Bristow State Park Northeast Slough: This site totals 2.2 ha (5.4 ac), is owned by the OPRD, and Oregon chub were first observed here in 1999. Although only 230 Oregon chub were counted at the site in 2008, the habitat contains 3 of the 4 PCEs and has exhibited capability of supporting a substantial population of the species based on past survey population estimates of over 500 individuals. The maximum depth is 2 m (6.6 ft), averaging 0.8 m (2.6 ft), and the temperature was recorded at 22 °C (72 °F) on July 22, 2008. The substrate is composed of 10 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 100 percent of the surface area. Beaver have also been observed at this location. Competing and predatory nonnative species have also been observed. Because of its connection to the Middle Fork Willamette River, the water levels at this site can be affected by hydrologic changes in the river and the site is at

risk of infiltration by additional nonnative fish.

Unit 3D, Elijah Bristow State Park Island Pond: This site totals 2.1 ha (5.2 ac), is owned by the OPRD, and Oregon chub were first observed here in 2003. The population is currently estimated at 1,619 individuals and has been stable for 5 years. The habitat contains 3 of the 4 PCEs. The maximum depth is 2 m (6.6 ft), averaging 1.2 m (3.9 ft), and the temperature was recorded at 18 and 25 °C (64 and 77 °F) at various locations within the site on July 17, 2008. The substrate is composed of 96 percent silt and organic material, and there is a variety of emergent and submergent aquatic vegetation covering 92 percent of the surface area. Competing and predatory nonnative species have been observed at this location. Because of its connection to the Middle Fork Willamette River, the water levels at this site can be affected by hydrologic changes in the river and the site is at risk of infiltration by additional nonnative fish.

Unit 3E, Dexter Reservoir RV Alcove (DEX 3): This site totals 0.4 ha (0.9 ac) and is owned by the USACE. The site is located on the south side of Highway 58 off Dexter Reservoir next to a recreational vehicle (RV) park, and was occupied by Oregon chub at the time of listing. The population is currently estimated at 4,024 individuals, and has been stable for 5 years, and the habitat contains 3 of the 4 PCEs. The maximum depth is 1 m (3.3 ft), averaging 0.7 m (2.3 ft), and the temperature was recorded at 22.5 °C (72.5 °F) on July 1, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent, submergent and floating aquatic vegetation covering 87 percent of the surface area. Competing and predatory nonnative species have been observed at this location. The site is periodically connected to Dexter Reservoir and is therefore subject to impacts from regulated flow management, as well as low summer water levels, and the risk of infiltration by additional nonnative fish. Because of the site's close proximity to both the RV park and the highway, the water quality is at risk of contamination by spills and garbage.

Unit 3F, Dexter Reservoir Alcove (PIT1): This site totals 0.1 ha (0.3 ac) measured at the annual high-water elevation and is owned by the USACE. The site is located on the south side of Highway 58 off Dexter Reservoir, and was occupied by Oregon chub at the time of listing. PIT1 is an embayment adjacent to the south shoulder of State Hwy 58 and connected by culvert beneath the highway to Dexter Reservoir. The area is owned by the State of Oregon but under USACE jurisdiction via a flowage easement. The site has gradually sloping banks, woody debris, and supports shrubs, emergent and submergent vegetation. There is also a large boulder riprap revetment on the highway side. A small, intermittent stream enters from the south. The population is currently estimated at 684 individuals and has been stable for 5 years. The habitat contains 3 of the 4 PCEs. The maximum water depth is 1 m (3.3 ft), averaging 0.5 m (1.6 ft), and the temperature was recorded at 18 °C (64 °F) on July 2, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of aquatic vegetation including emergent, submergent, and algae covering 100 percent of the surface area. Competing and predatory nonnative species have been observed at this location. Because of its connection to Dexter Reservoir, the site is subject to impacts from regulated flow management, as well as low summer water levels, and the risk of infiltration by additional nonnative fish. Because of the site's close proximity to the highway, the water quality is at risk of contamination by spills.

Unit 3G, East Fork Minnow Creek Pond: This site totals 1.3 ha (3.3 ac), is owned by the ODOT, and was occupied by Oregon chub at the time of listing. East Minnow Creek Pond is a large beaver pond on a small tributary to Minnow Creek that drains into Lookout Point Reservoir. The pond enters Minnow Creek just south of Highway 58, after which the creek flows under the highway through a large box culvert. The population is currently estimated at 2,156 individuals and has been stable for 5 years. The habitat contains all of the PCEs. The maximum depth is 1.2 m (3.9 ft), averaging 0.5 m (1.6 ft), and the temperature was recorded at 19 °C (66 °F) on July 2, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 100 percent of the surface area. The site is isolated from other water bodies and has no competing or predatory nonnative species but is under several threats including excess sedimentation resulting from timber harvest in the watershed, vegetation displacement of open water habitat and, due to the site's close proximity to the highway, contamination-related water quality issues. The ODOT is in the process of implementing a conservation bank for Oregon chub at this site; the bank includes the restoration, construction, and enhancement of Oregon chub habitat and other regionally significant habitats.

Unit 3H, Hospital Pond: This site totals 0.5 ha (1.1 ac), is owned by the USACE, and was occupied by Oregon chub at the time of listing. The pond is located on the north side of the gravel road on the north shore of Lookout Point Reservoir and spring-fed Hospital Creek flows into the east end of the pond. The population is currently estimated at 3,682 individuals and has been stable for 5 years. The habitat contains all of the PCEs. The maximum water depth is 3 m (9.8 ft), averaging 2 m (6.6 ft), and the temperature on the flooded terrace was recorded at 15 °C (59 °F) on July 1, 2008. The substrate is composed of 100 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 100 percent of the surface area. Although the site currently has no competing or predatory nonnative species, its connection to the reservoir puts it at risk of nonnative fish introduction. Beaver activity is evident in the pond. A culvert and gate at the outflow culvert maintains the high water level of the pond, but water levels in the pond can fluctuate due to its connection with the reservoir. Contamination-related water quality issues are also of concern due to the site's close proximity to the road.

Unit 3I, Shady Dell Pond: This site totals 1.1 ha (2.8 ac), is owned by the United States Forest Service (USFS), and was occupied by Oregon chub at the time of listing. Shady Dell Pond is located in the far southeast end of Lookout Point Reservoir along the south side of State Highway 58 in a USFS campground. The pond was a former slough that was partially isolated from the Middle Fork Willamette River during highway construction. The site has gradually sloping banks, slightly turbid water, moderately abundant aquatic vegetation, and a substrate mix of detritus, silt, and boulders. The pond was fed only by rainfall and seepage, with no obvious outlet, but the USFS installed a diversion pipe from Dell Creek to Shady Dell Pond to maintain adequate summer water levels and counteract the surface area shrinkage caused by evaporation, leakage, or both. The population is currently estimated at 7,249 individuals, has been stable for 5 years, and the habitat contains all of the PCEs. The maximum depth is 1.1 m (3.6 ft), averaging 0.5 m (1.6 ft), and the temperature was recorded at 21 °C (70 °F) on July 22, 2008. The substrate is 100 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic

vegetation covering 82 percent of the surface area. The site is isolated from other water bodies and has no competing or predatory nonnative species. Beaver have been observed at this location. Because of its proximity to the campground and its connection to Dell Creek the site is at risk from nonnative fish introduction and contamination-related water quality issues.

Unit 3J, Buckhead Creek: This site totals 3.8 ha (9.3 ac), is owned by the USFS, and was occupied by Oregon chub at the time of listing. Buckhead Creek is a tributary flowing into the Middle Fork Willamette River at the northeast end of Lookout Point Reservoir. Access to the site is via a Lane County gravel road and USFS Road 5821 that skirts the east side of the river. The channel varies from a few meters (feet) to over 16 m (50 feet) wide with both sloping and undercut banks, a bottom composed of silt, boulders, gravel and detritus, with some woody debris and aquatic vegetation. The lower 2.4 km (1.5 miles) of the creek flows through a slough-like, abandoned channel of the Middle Fork Willamette River and is wide, shallow, slightly turbid and low gradient, with marshy habitat. The population is currently estimated at 1,258 individuals and has been stable for 5 years. The habitat contains all of the PCEs. The maximum depth is 1.5 m (4.9 ft), averaging 0.8 m (2.6 ft), and the temperature was recorded at between 18 and 24 °C (64 and 75 °F) on July 15 and July 21, 2008. The substrate is composed of 98 percent silt and organic material, and there is a variety of emergent, submergent, and floating aquatic vegetation covering 80 percent of the surface area. Beaver frequent the area and Oregon chub are often found in beaver ponds on the lower 2.4 km (1.5 mi) of the creek. Although the site currently has no competing or predatory nonnative species, its connection to the river puts it at risk of nonnative fish introduction. Other threats include excess sedimentation from logging in the watershed as well as contamination-related water quality issues due to the site's close proximity to the road.

Unit 3K, Wicopee Pond: This site totals 1.4 ha (3.3 ac), is owned by the USFS, and was occupied at the time of listing as a result of a 1988 introduction of 50 Oregon chub. The pond, a former borrow pit adjacent to Salt Creek in the upper Middle Fork Willamette River drainage, was created when a bridge crossing was constructed on a small logging road that crosses Salt Creek, along Highway 58. The population is currently estimated at 5,431 individuals and has been stable for 5 years. The habitat contains all of the PCEs. The maximum depth is 2 m (6.6 ft), averaging 1.2 m (3.9 ft), and the temperature was recorded at 17 °C (63 °F) on June 30, 2008. The substrate is 100 percent silt and organic material, and there is a variety of emergent, submergent and floating aquatic vegetation and algae covering 100 percent of the surface area. Beaver have been observed at this location and the site has no competing or predatory nonnative species. The site is at risk of excess sedimentation resulting from logging in the watershed.

Table 1 provides a summary of the approximate area (hectares/acres) of sites by County and ownership determined to meet the definition of critical habitat to the Oregon chub. Table 2 provides ownership information and the area of each proposed critical habitat unit.

TABLE 1—AREAS IN HECTARES (ACRES) DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE OREGON CHUB (DEFINITIONAL AREA) BY COUNTY AND OWNERSHIP (TOTALS MAY NOT SUM DUE TO ROUNDING)

County	Private	State	Federal	Other government	Definitional area
Benton	7.3 (18.1)		3.7 (9.2)		6.3 (27.3)
Lane	3.5 (8.6)	10.8 (26.5)	8.7 (21.6)		23.0 (56.7)
Linn		1.4 (3.6)	0.4 (1.0)		1.8 (4.6)
Marion	2.5 (6.2)		14.0 (34.5)	1.2 (2.8)	17.6 (43.6)
Total	13.3 (32.9)	12.2 (30.11)	26.8 (66.3)	1.2 (2.8)	53.5 (132.1)

TABLE 2—CRITICAL HABITAT UNITS PROPOSED FOR THE OREGON CHUB (TOTALS MAY NOT SUM DUE TO ROUNDING)

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership	Hectares	Acres
1A	State of Oregon, ODOT	1.4	3.3
1B(1)	City of Salem	0.8	1.9
1B(2)	City of Stayton	0.4	1.0
1B(3)	State of Oregon, ODFW	0.1	0.2
1B(4)	Private	2.5	6.2
1C	USACE	0.4	1.0
2A(1)	Private	0.1	0.1
2A(2)	Private	0.1	0.3
2A(3)	Private	3.3	8.2
2B(1)	USFWS	14.0	34.5
2B(2)	Private	6.1	15.2
2B(3)	USFWS	1.0	2.4
2B(4)	USFWS	0.9	2.3
2B(5)	USFWS & Private	3.0	7.4
3A	USACE	1.5	3.8
3B	State of Oregon, OPRD	5.2	12.7
3C	State of Oregon, OPRD	2.2	5.4
3D	State of Oregon, OPRD	2.1	5.2
3E	USACE	0.4	0.9
3F	USACE	0.1	0.3
3G	State of Oregon, ODOT	1.3	3.3

TABLE 2—CRITICAL HABITAT UNITS PROPOSED FOR THE OREGON CHUB (TOTALS MAY NOT SUM DUE TO ROUNDING)—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership	Hectares	Acres
3H	USACE	0.5	1.1
3I	USFS	1.1	2.8
3J	USFS	3.8	9.3
3K	USFS	1.4	3.3
Total		53.5	132.1

[Key of abbreviations in Table 2:
ODOT—Oregon Department of Transportation
ODFW—Oregon Department of Fish and Wildlife
USACE—United States Army Corps of Engineers
USFWS—U.S. Fish and Wildlife Service
OPRD—Oregon Parks and Recreation Department
USFS—U.S. Forest Service]

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the courts of appeal for the Fifth and Ninth Circuits have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, an important factor in determining whether an action will destroy or adversely modify critical habitat is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once proposed species become listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) of the Act apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and, if we list the proposed species or designate proposed critical habitat, to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process. We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when the Federal agency or the Service believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) of the Act will be documented through the Service's issuance of:

1. A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

2. A biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to

result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. 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 a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, some 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 may affect subsequently listed species or designated critical habitat.

Application of the Jeopardy and Adverse Modification Standards

Jeopardy Standard

Currently, the Service applies an analytical framework for Oregon chub jeopardy analyses that relies heavily on the importance of known populations to the species' survival and recovery. The section 7(a)(2) of the Act analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the Oregon chub in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the range-wide status of the Oregon chub, the factors responsible for that condition, and what is necessary for this species to survive and recover. An emphasis is also placed on characterizing the condition of the Oregon chub in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of the Oregon chub. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Oregon chub. Generally, the conservation role of Oregon chub critical habitat units is to support the various life-history needs and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Oregon chub include, but are not limited to:

1. Actions that would adversely affect the Oregon chub's space for individual and population growth and normal behavior. These include altering the flow, gradient, or depth of the water channel by way of activities such as channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade, reduce, or eliminate the habitat necessary for the growth and reproduction of Oregon chub.

2. Actions that would significantly alter areas for reproduction, shelter, and food (habitat for prey). These include:

- Reducing or eliminating vegetative cover of the water channel by activities such as release of contaminants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in loss of the vegetative cover that is vital to the Oregon chub's ability to spawn and hide from predators.
- Altering the substrate within the water channel through sediment deposition from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. When these activities increase the sediment deposition to levels that begin to change open-water habitat to emergent wetland, the habitat necessary for the growth and reproduction of these fish is reduced or eliminated.
- Significantly decreasing the populations of minute organisms in the water channel that make up the food base of the Oregon chub.

3. Actions that would significantly alter water temperature, thereby negatively affecting the Oregon chub's physiological processes for normal spawning and survival. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water quality to conditions that are beyond the tolerances of Oregon chub and result in direct or cumulative adverse effects to these individuals and their life cycles.

4. Actions that would disturb the habitat of Oregon chub by introducing, spreading, or augmenting nonnative competitive or predatory aquatic species into any of the proposed designated units. Such activities may include, but are not limited to, stocking for sport, aesthetics, biological control, or other purposes; the illegal use of live bait fish, aquaculture, or dumping of aquarium fish or other species; and connection of a designated critical habitat unit to another water body known to contain nonnative aquatic species. These activities could cause Oregon chub fatalities, displace Oregon chub from their habitat, and/or cause Oregon chub to spend a disproportionate amount of time hiding at the expense of foraging.

We consider all of the units proposed as critical habitat to contain features essential to the conservation of the Oregon chub. All units are within the geographic range of the species and are currently occupied by the Oregon chub. To ensure that their actions do not jeopardize the continued existence of the Oregon chub, Federal agencies

already consult with us on activities in areas currently occupied by the Oregon chub, or in unoccupied areas if the species may be affected by the action.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed integrated natural resources management plan within the proposed critical habitat designation. Therefore, there are no specific lands that meet the criteria for being exempted from the designation of critical habitat pursuant to section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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, based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. In addition to economic impacts, we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners have developed any Habitat Conservation Plans (HCPs) for the area, or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Tribal lands or Tribal Trust resources that might be affected, and consider the government-to-government relationship of the United States with the Tribal entities. We also consider any social impacts that might occur because of the designation.

We have preliminarily considered the potential economic impacts of this proposed critical habitat designation, and are not proposing to exclude any areas under section 4(b)(2) of the Act because of economic, national security, or other considerations. Although some sites have a level of management for Oregon chub in place, none of the sites currently have the type of comprehensive management plan required to ensure the conservation of the species on site, such as any legally operative HCPs that cover the species, draft HCPs that cover the species and have undergone public review and comment, State conservation plans that cover the species, or National Wildlife Refuge System Comprehensive Conservation Plans that specifically mention and plan for Oregon chub conservation. Additionally, none of the lands or waters within the proposed designation are owned or managed for purposes of national security by the Department of Defense, and the proposed designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this proposed critical habitat designation. Based on the best available information, we have preliminarily determined that all of the units proposed as critical habitat contain the features essential to, or are otherwise essential for the conservation of, this species. However, to ensure our final determination is based on the best available information, we are soliciting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation of critical habitat from governmental, business, or private interests, and in particular, any potential impacts on small entities. We are also soliciting comments on whether the benefits of exclusion of a particular area outweigh the benefits of inclusion.

Economic Analysis

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 exceed 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.

In compliance with section 4(b)(2) of the Act, the Service is preparing an economic analysis of the impacts of proposing critical habitat designation and related factors for the Oregon chub, to evaluate the potential economic impact of the designation. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for

downloading from the Internet at *http://www.regulations.gov,* or from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Based on public comment on that document, areas may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the address listed in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

1. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

2. Whether the rule will create inconsistencies with other Federal agencies' actions.

3. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted

by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

b. We do not believe that this rule will significantly or uniquely affect small governments. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that for this species we believe critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

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 Oregon chub in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Oregon chub does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Oregon. The designation of critical habitat in areas currently occupied by the Oregon chub 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 features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Oregon chub.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of the Oregon chub and no Tribal lands that are unoccupied areas that are essential for the conservation of the Oregon chub. Therefore, designation of critical habitat for the Oregon chub has not been designated on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Oregon chub is not expected to significantly affect energy supplies, distribution, or use. Although there are some hydroelectric operations on dams operated by the USACE adjacent to several critical habitat units along the Middlefork Willamette River, the USACE recently completed a formal consultation with the Service regarding the effect of those operations on Oregon chub. The Biological Opinion On the Continued Operation and Maintenance of the Willamette River Basin Project and Effects to Oregon Chub, Bull Trout, and Bull Trout Critical Habitat Designated Under the Endangered Species Act (USFWS 2008b) established strict Terms and Conditions for the conservation of Oregon chub in those

habitats that would be impacted by dam operations. These same habitats are included in this proposal. The designation of critical habitat in the areas adjacent to the hydroelectric operations will not change current Oregon chub conservation practices surrounding dam operations. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Oregon Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are staff members of the Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Chub, Oregon'' under ''Fishes'' 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						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Chub, Oregon	*Oregonichthys crameri.*	U.S.A. (OR)	entire	E	520	17.95(e)	NA
*	*	*	*	*	*	*	

* * * * *

3. In § 17.95(e), add an entry for ''Oregon Chub (*Oregonichthys crameri*)'' under ''Fishes'', in the same alphabetic order as this species appears in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Oregon Chub (*Oregonichthys crameri*)

(1) Critical habitat units are depicted for Benton, Lane, Linn, and Marion Counties, Oregon, on the maps below.

(2) The primary constituent elements of critical habitat for the Oregon chub are the habitat components that provide:

(i) Off-channel water bodies such as beaver ponds, oxbows, side-channels, stable backwater sloughs, low-gradient tributaries, and flooded marshes, including at least 500 continuous square meters (0.12 ac) of surface area and water depth between approximately 0.5–2.0 m (1.6–6.6 ft). This PCE provides space for individual and population growth and normal behavior.

(ii) Aquatic vegetation covering a minimum of 250 m^2 (.061 ac) (or between approximately 25 and 100 percent of the total surface area of the habitat). This vegetation is primarily submergent for purposes of spawning, but also includes emergent and floating vegetation, and algae, which is important for cover throughout the year. This PCE provides areas for reproduction, shelter, and food (habitat for prey). Areas with sufficient vegetation are likely to also have the following characteristics:

(A) Gradient less than 2.5 percent;

(B) No or very low water velocity in late spring and summer;

(C) Silty, organic substrate; and

(D) Abundant minute organisms such as rotifers, copepods, cladocerans, and chironomid larvae.

(iii) Late spring and summer subsurface water temperatures between 15 and 25 °C (59 and 78 °F), with natural diurnal and seasonal variation. This PCE enables optimal physiological processes for spawning and survival.

(iv) No or negligible levels of nonnative aquatic predatory or competitive species. Negligible is defined for the purpose of this proposed rule as a minimal level of nonnative species that will still allow the Oregon chub to continue to survive and reproduce. This PCE provides Oregon chub habitat free from disturbance and, therefore, sufficient reproduction and survival opportunities.

(3) Critical habitat does not include man-made structures (including, but not limited to, docks, seawalls, pipelines, or other structures) and the land on which they are located existing within the boundaries on the effective date of this rule.

(4) Critical Habitat Map Units. The data layer defining critical habitat was created using a Trimble GeoXT GPS unit. These critical habitat units were mapped using Universal Transverse Mercator, Zone 10, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units.

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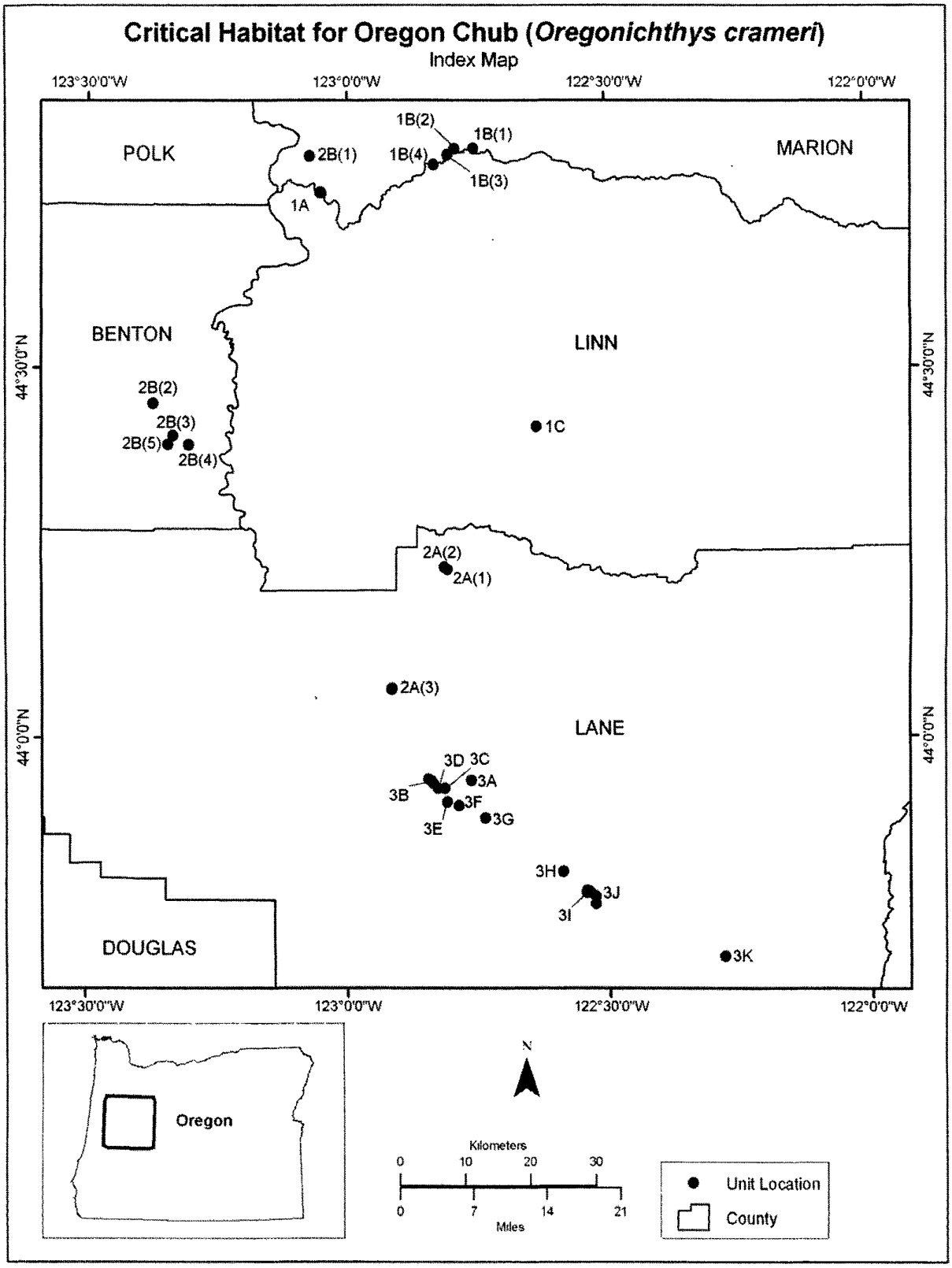
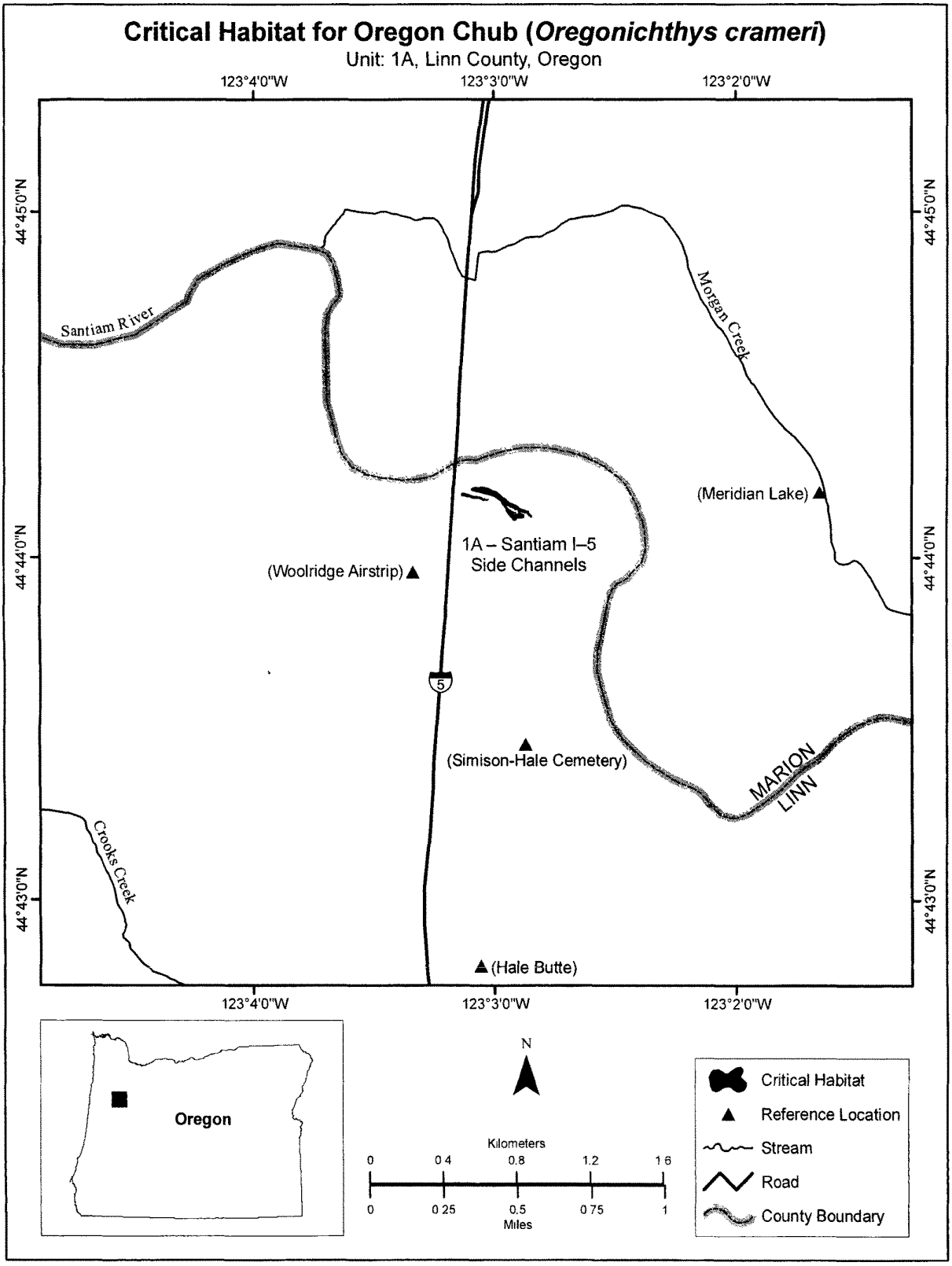
(5) **Note:** Index map for critical habitat for the Oregon chub follows:



(6) Unit 1A: Santiam I–5 Side Channels, Linn County, Oregon.

(i) [Reserved for textual description of unit.]

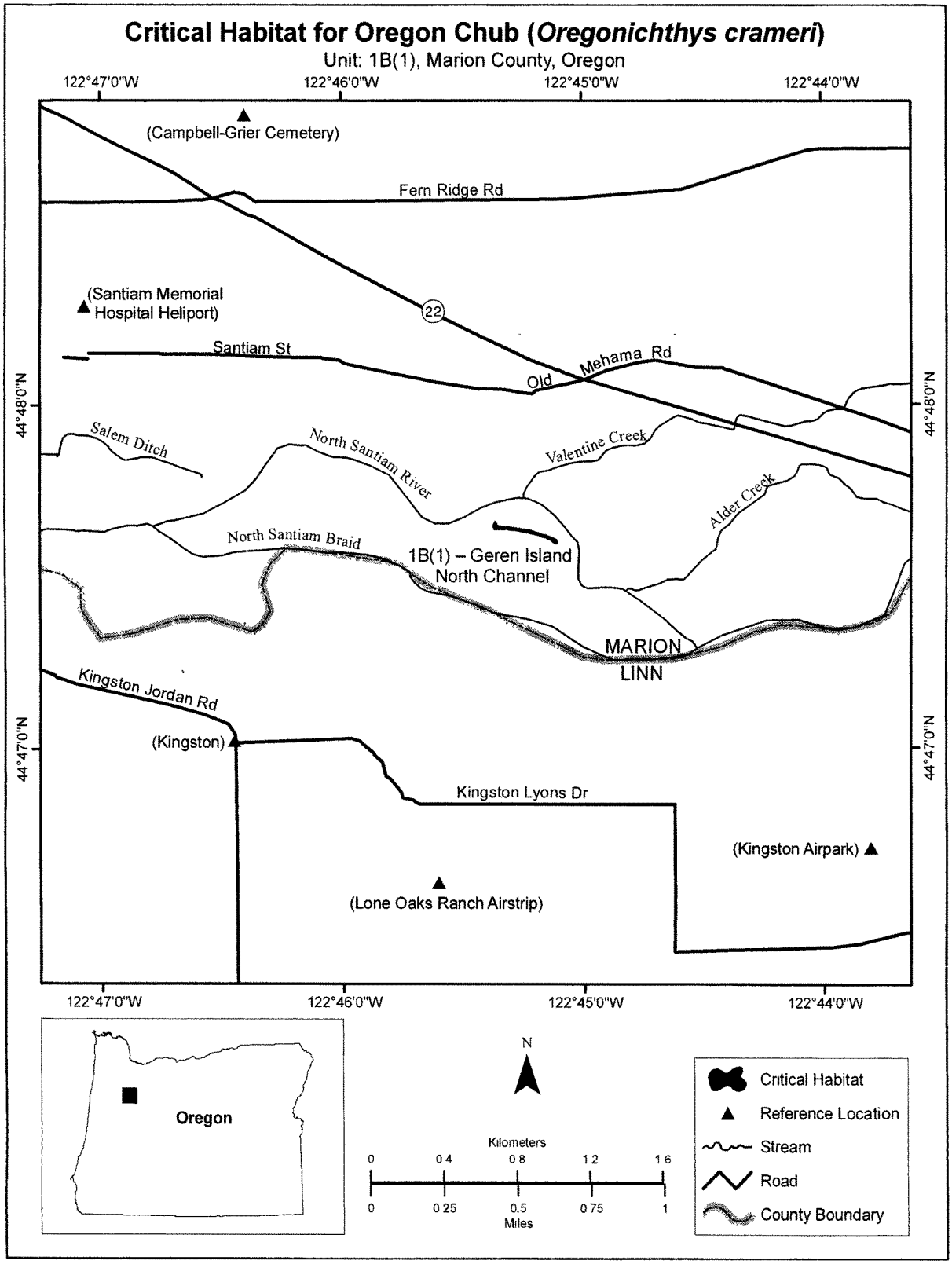
(ii) **Note:** Map of Unit 1A Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(7) Unit 1B(1): Geren Island North Channel, Marion County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 1B(1) Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(8) Unit 1B(2): Stayton Public Works Pond, Marion County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 1(B)(2) is found at paragraph (10)(ii) of this entry.

(9) Unit 1B(3): South Stayton Pond, Linn County, Oregon.

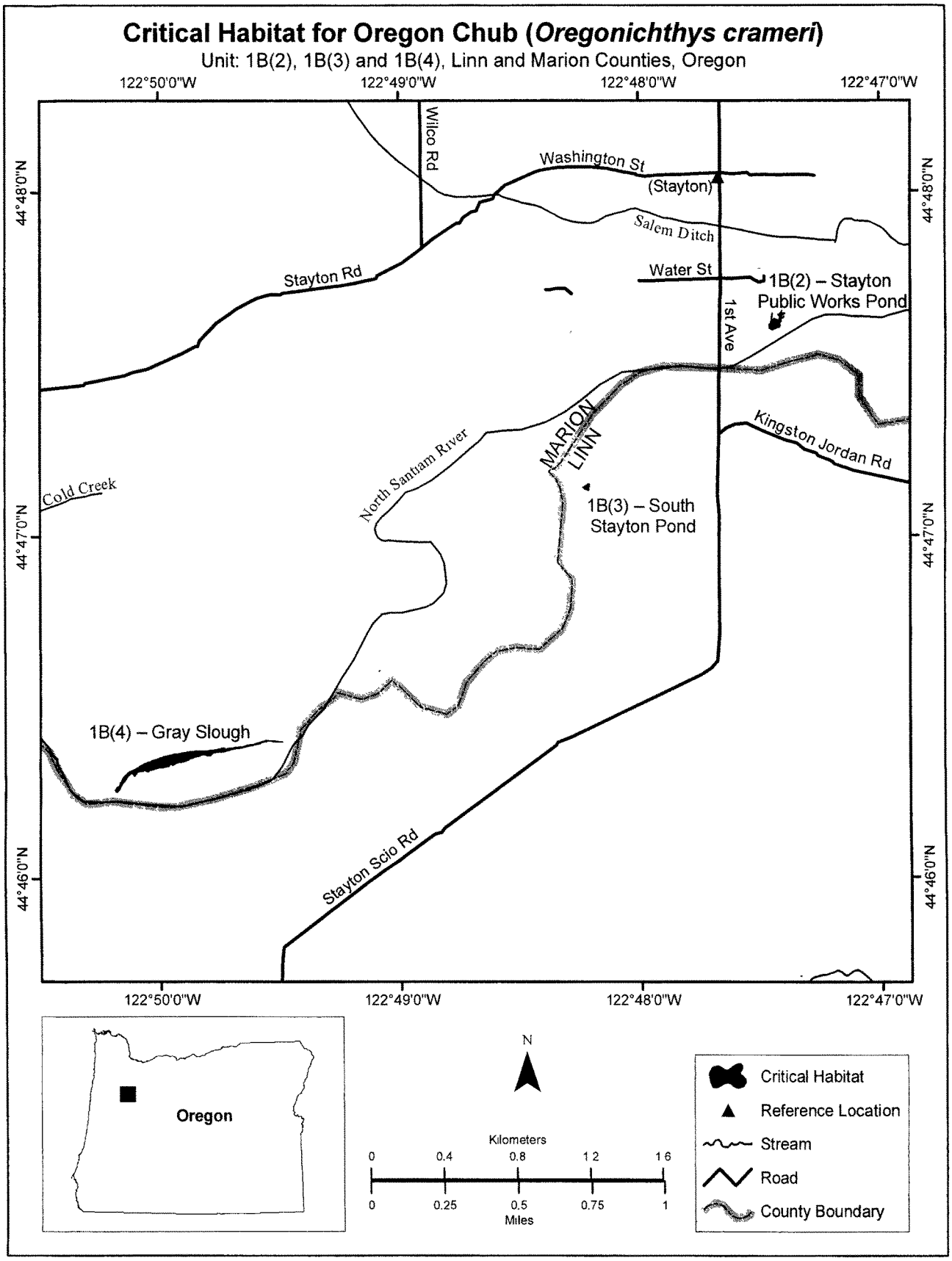
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 1(B)(3) is found at paragraph (10)(ii) of this entry.

(10) Unit 1B(4): Gray Slough, Marion County, Oregon.

(i) [Reserved for textual description of unit.]

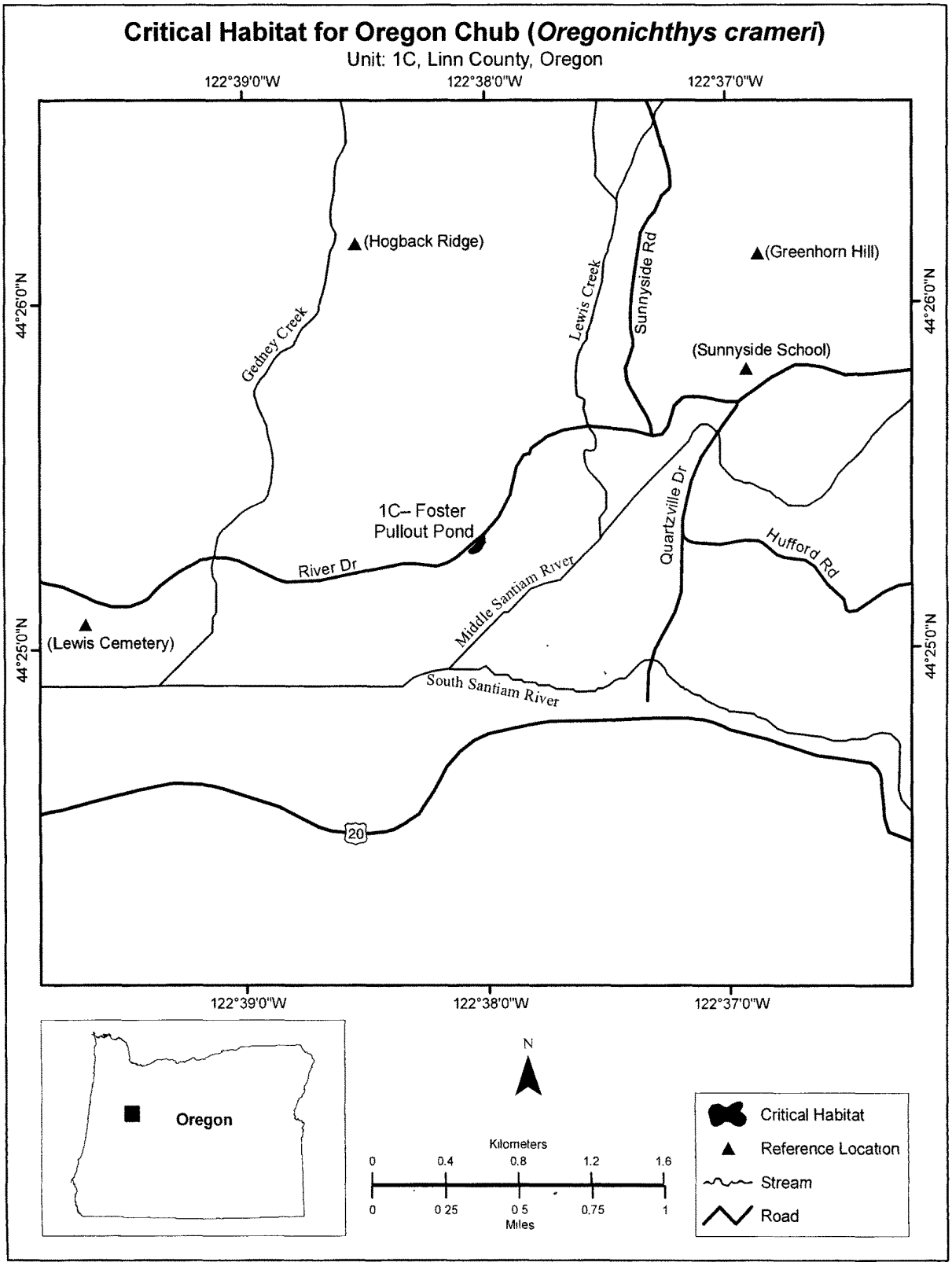
(ii) **Note:** Map of Units 1B(2), 1B(3), and 1B(4) of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (Oregonichthys crameri)
Unit: 1B(2), 1B(3) and 1B(4), Linn and Marion Counties, Oregon
122°50'0"W
122°49'0"W
122°48'0"W
122°47'0"W
44°48'0"N
44°47'0"N
44°46'0"N
Wilco Rd
Washington St
(Stayton)
Salem Ditch
Stayton Rd
Water St
1B(2) – Stayton Public Works Pond
1st Ave
MARION
LINN
Kingston Jordan Rd
North Santiam River
Cold Creek
1B(3) – South Stayton Pond
1B(4) – Gray Slough
Stayton Scio Rd
Oregon
N
Kilometers
0 0.4 0.8 1 2 1 6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road
County Boundary

(11) Unit 1C: Foster Pullout Pond, Linn County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 1C Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(12) Unit 2A(1): Russell Pond, Lane County, Oregon.

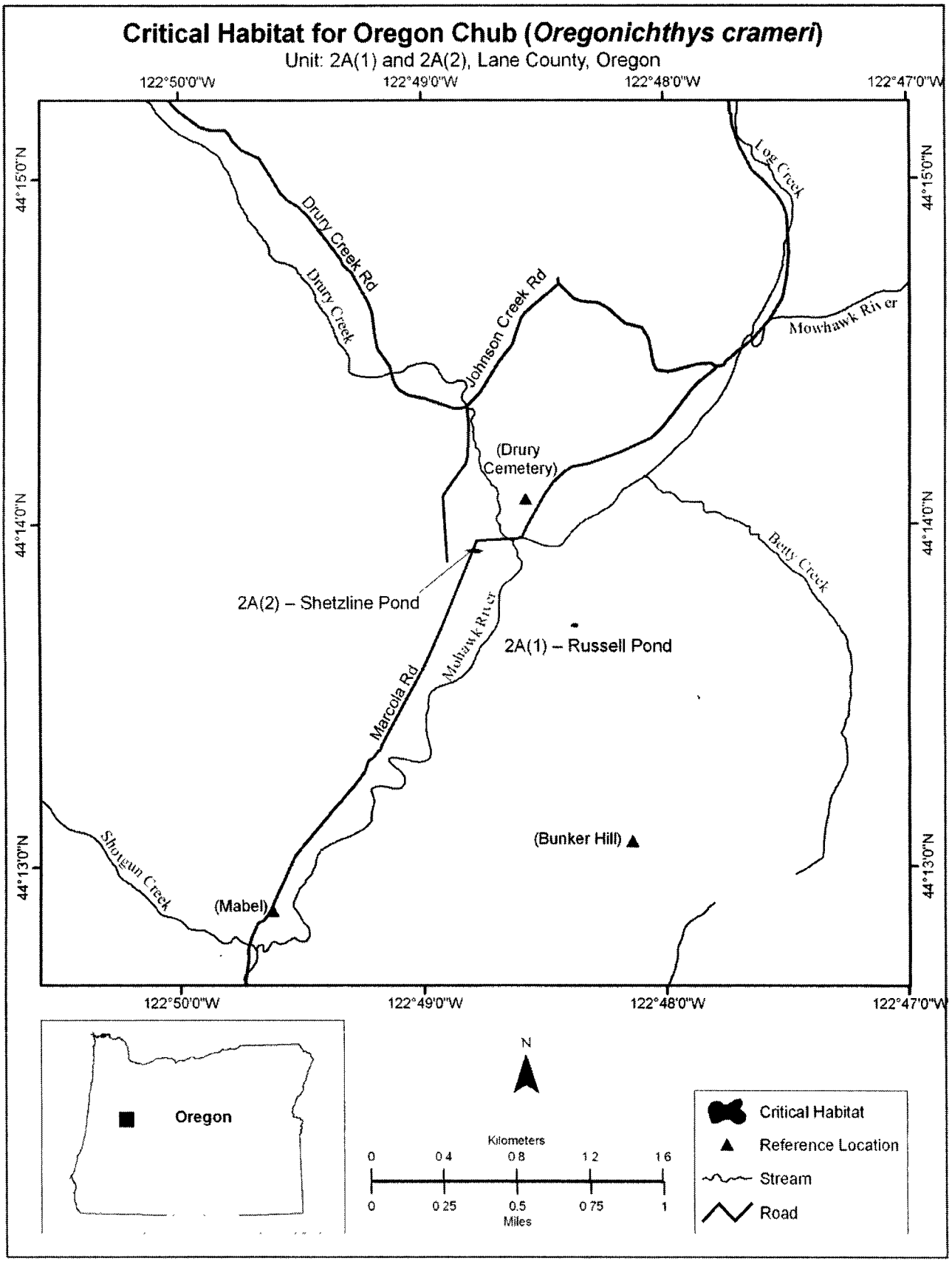
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 2(A)(1) is found at paragraph (13)(ii) of this entry.

(13) Unit 2A(2): Shetzline Pond, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

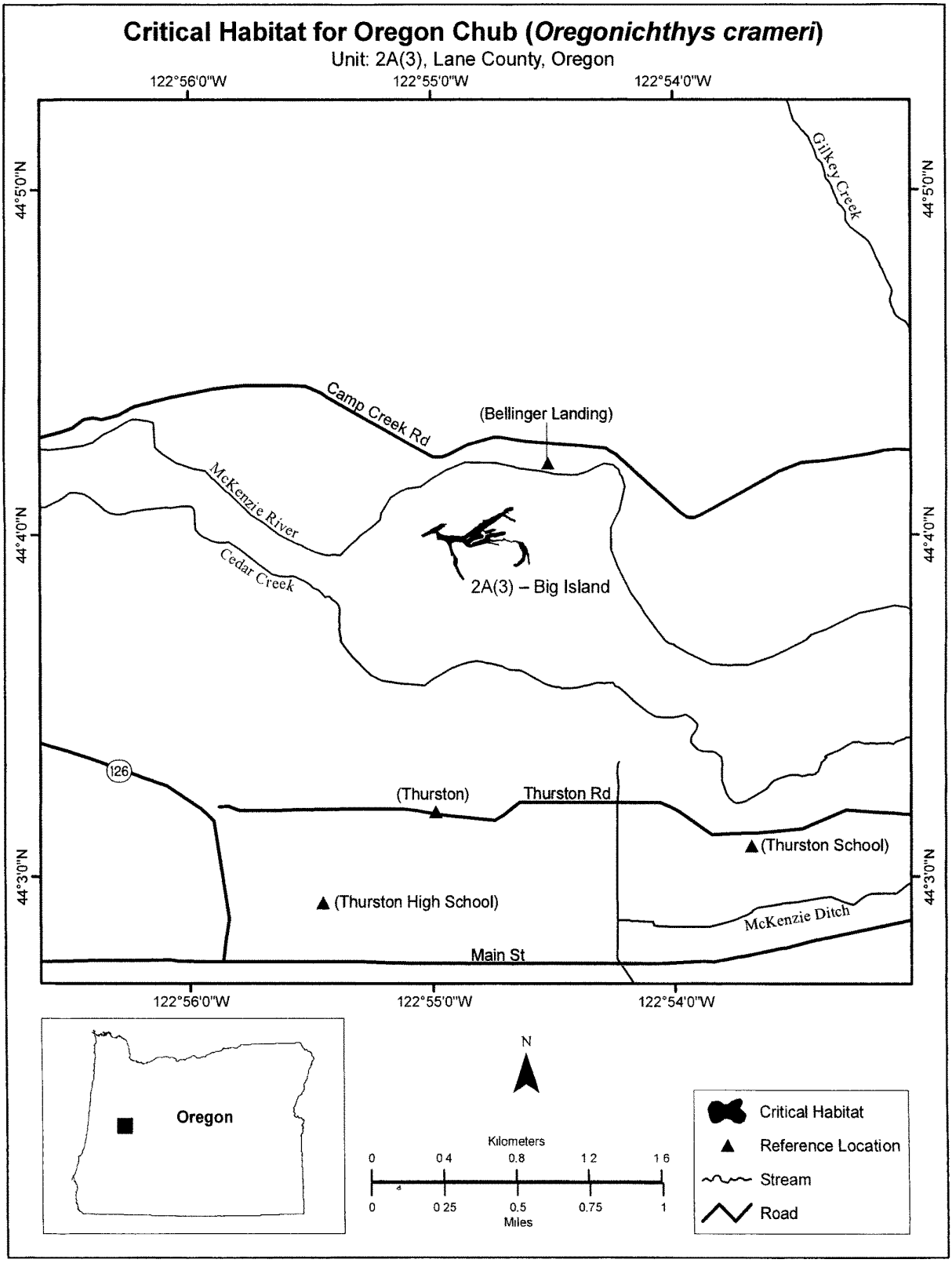
(ii) **Note:** Map of Units 2A(1) and 2A(2) of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (*Oregonichthys crameri*)
Unit: 2A(1) and 2A(2), Lane County, Oregon
122°50'0"W
122°49'0"W
122°48'0"W
122°47'0"W
44°15'0"N
44°14'0"N
44°13'0"N
Drury Creek Rd
Drury Creek
Johnson Creek Rd
Log Creek
Mowhawk River
(Drury Cemetery)
Betty Creek
2A(2) – Shetzline Pond
2A(1) – Russell Pond
Mohawk River
Marcola Rd
Shotgun Creek
(Mabel)
(Bunker Hill)
Oregon
N
Kilometers
0 0.4 0.8 1.2 1.6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road

(14) Unit 2A(3): Big Island, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

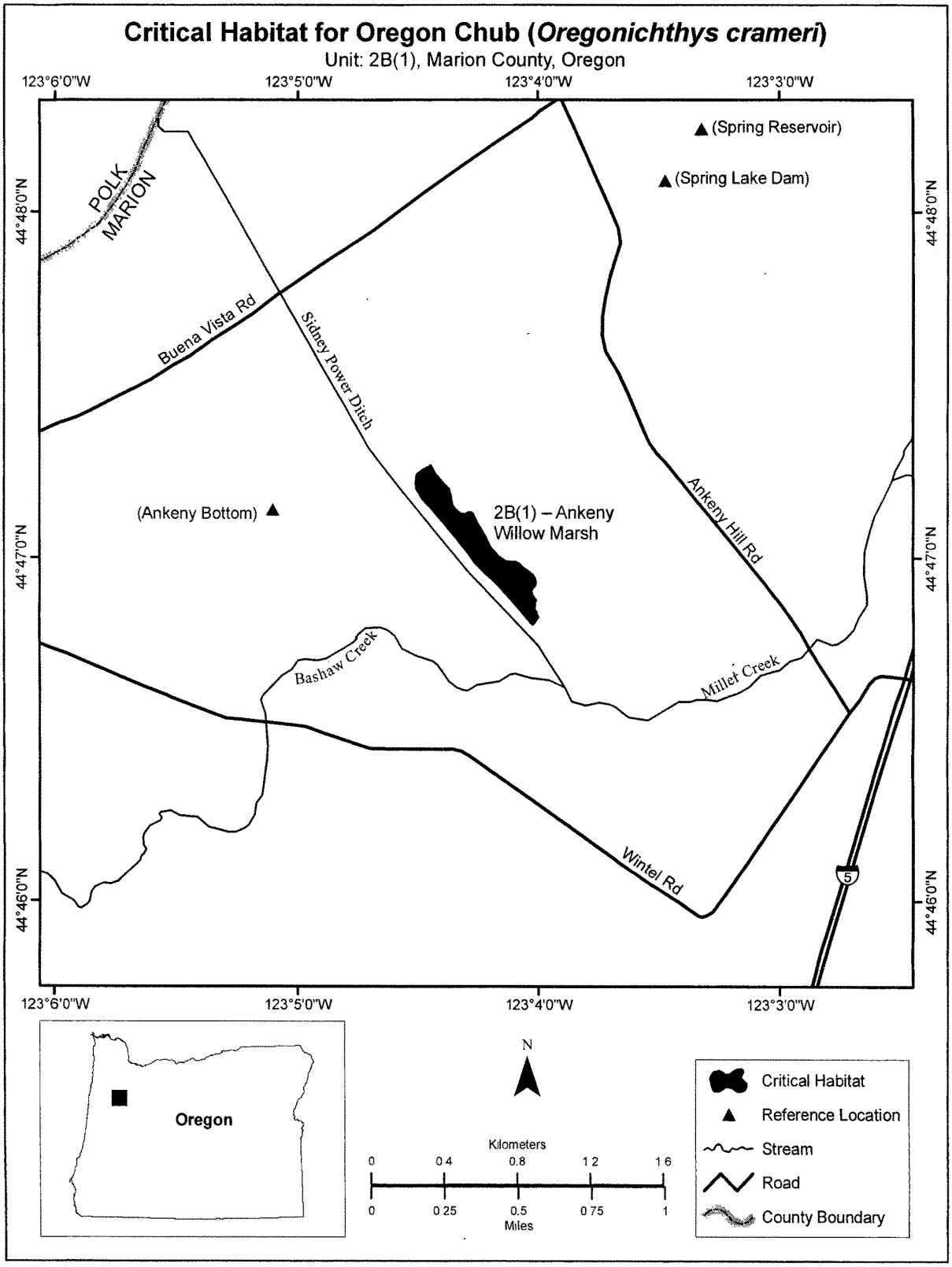
(ii) **Note:** Map of Unit 2A(3) Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(15) Unit 2B(1): Ankeny Willow Marsh, Marion County, Oregon.

(i) [Reserved for textual description of unit.]

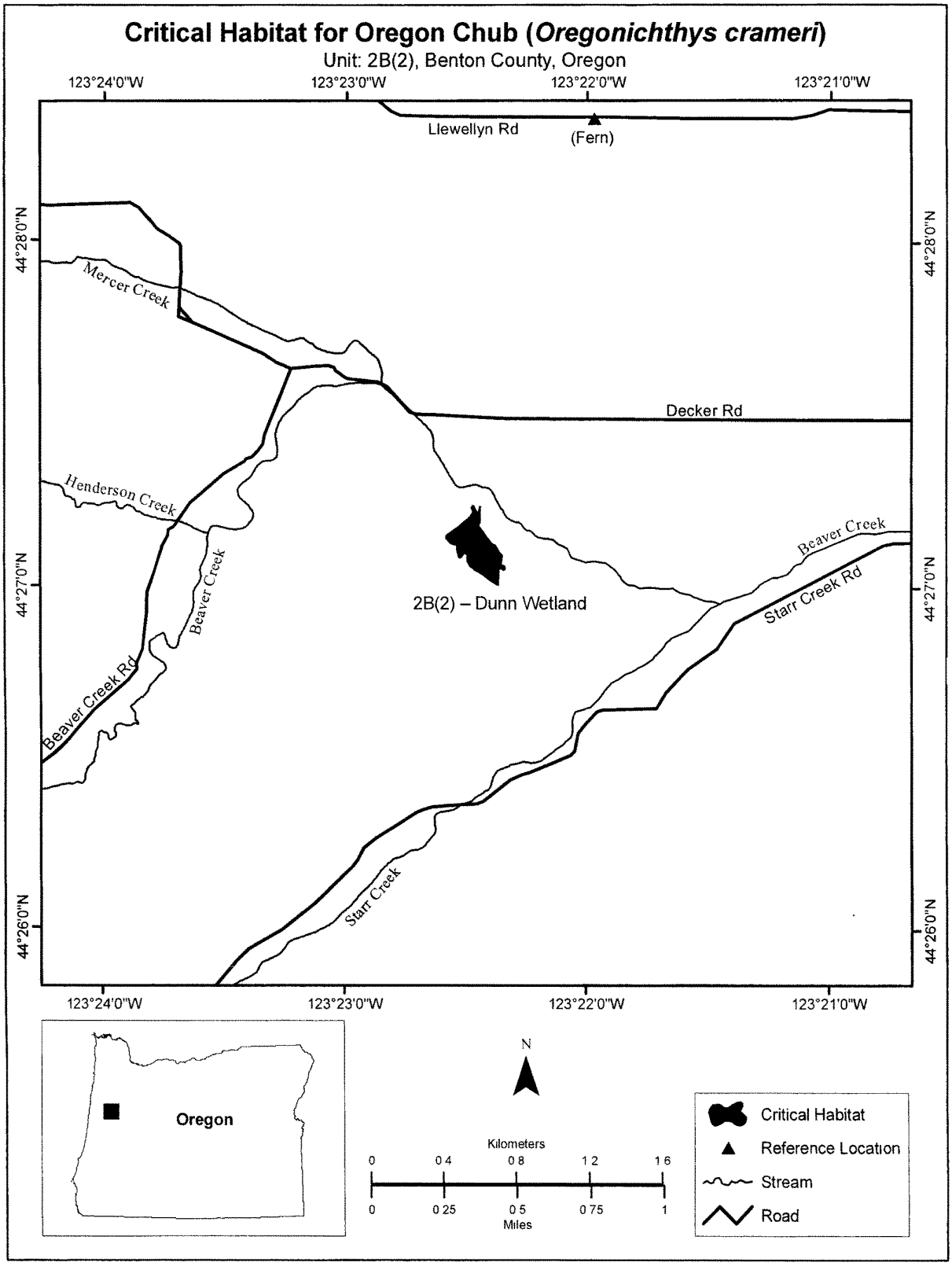
(ii) **Note:** Map of Unit 2B(1) Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(16) Unit 2B(2): Dunn Wetland, Benton County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 2B(2) Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(17) Unit 2B(3): Finley Display Pond, Benton County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 2(B)(3) is found at paragraph (19)(ii) of this entry.

(18) Unit 2B(4): Finley Cheadle Pond, Benton County, Oregon.

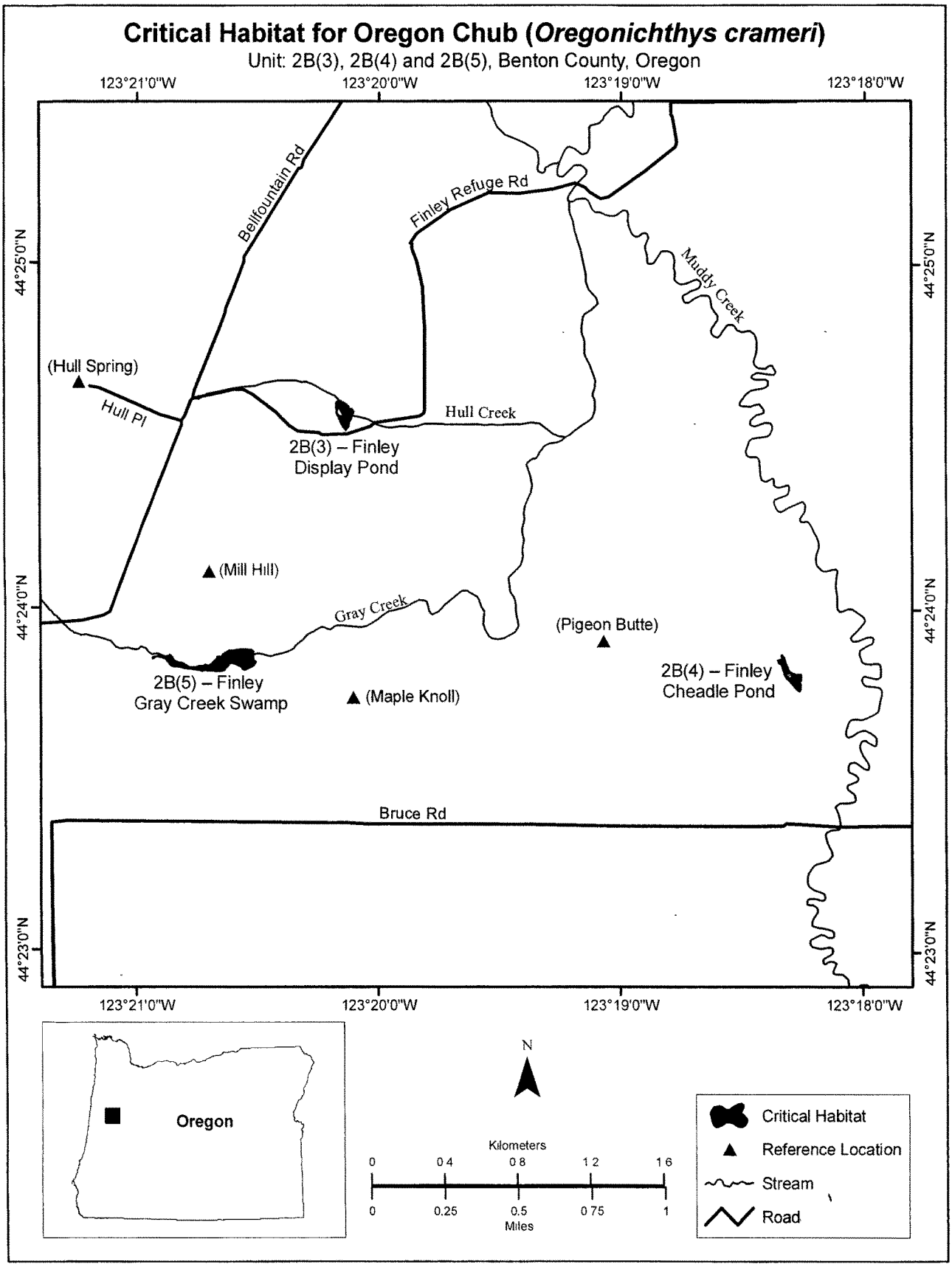
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 2(B)(4) is found at paragraph (19)(ii) of this entry.

(19) Unit 2B(5): Finley Gray Creek Swamp, Benton County, Oregon.

(i) [Reserved for textual description of unit.]

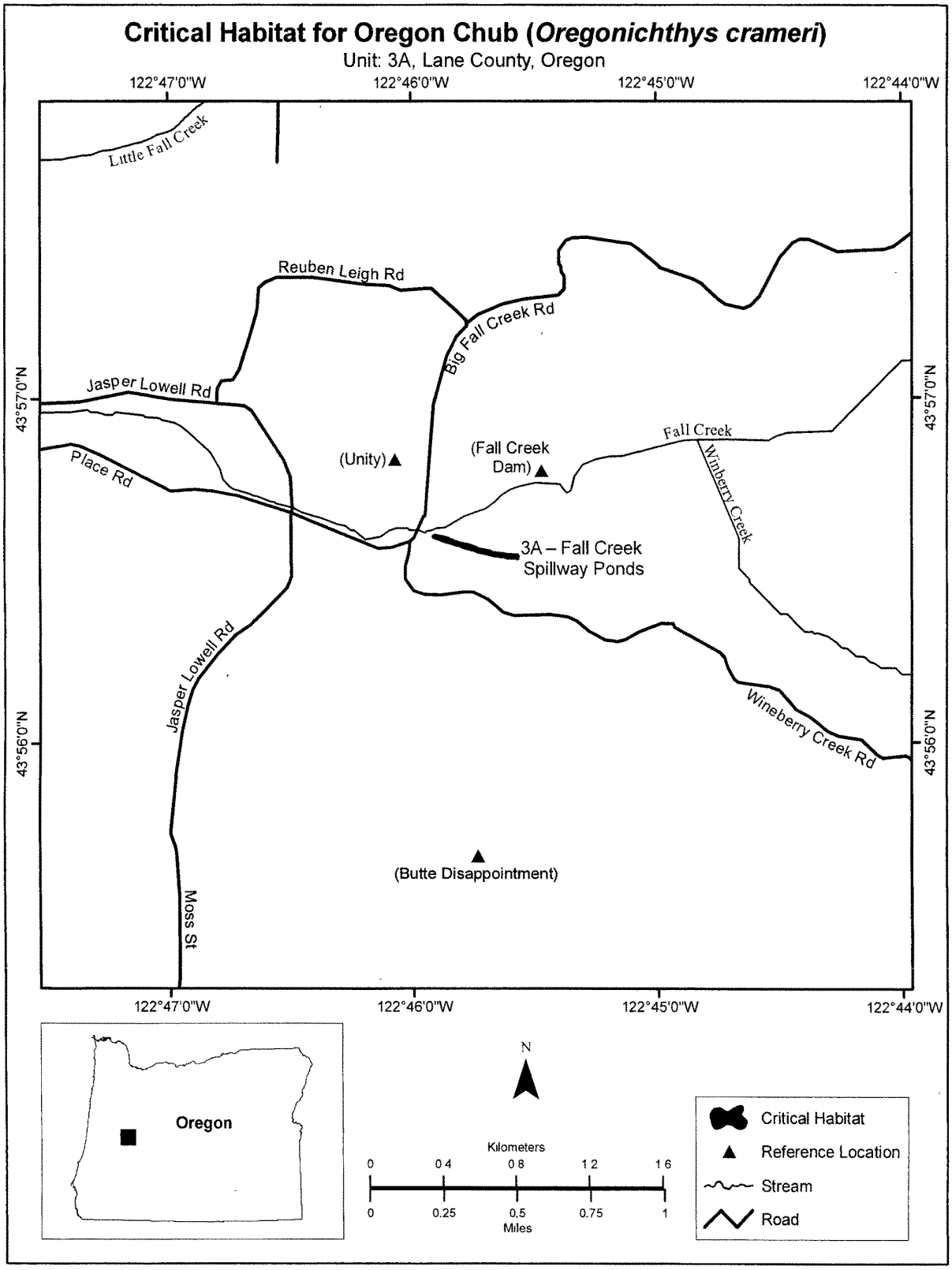
(ii) **Note:** Map of Units 2B(3), 2B(4), and 2B(5) of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (Oregonichthys crameri)
Unit: 2B(3), 2B(4) and 2B(5), Benton County, Oregon
123°21'0"W
123°20'0"W
123°19'0"W
123°18'0"W
44°25'0"N
44°24'0"N
44°23'0"N
Bellfountain Rd
Finley Refuge Rd
Muddy Creek
(Hull Spring)
Hull Pl
Hull Creek
2B(3) – Finley
Display Pond
(Mill Hill)
Gray Creek
(Pigeon Butte)
2B(5) – Finley
Gray Creek Swamp
(Maple Knoll)
2B(4) – Finley
Cheadle Pond
Bruce Rd
Oregon
N
Kilometers
0 0.4 0.8 1.2 1.6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road

(20) Unit 3A: Fall Creek Spillway Ponds, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 3A Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(21) Unit 3B: Elijah Bristow State Park Berry Slough, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 3B is found at paragraph (23)(ii) of this entry.

(22) Unit 3C; Elijah Bristow State Park Northeast Slough, Lane County, Oregon.

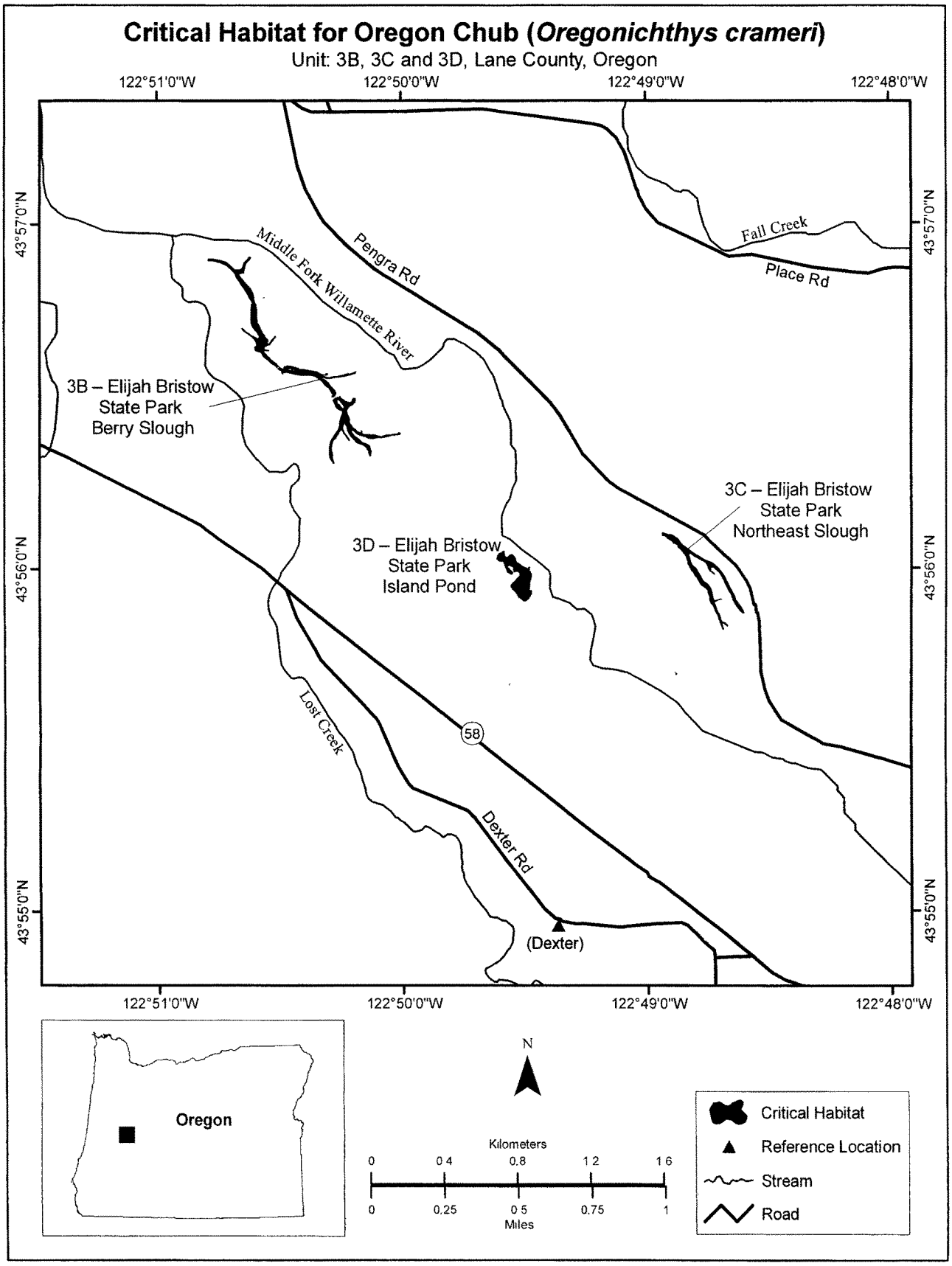
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 3C is found at paragraph (23)(ii) of this entry.

(23) Unit 3D: Elijah Bristow State Park Island Pond, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Units 3B, 3C, and 3D of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (*Oregonichthys crameri*)
Unit: 3B, 3C and 3D, Lane County, Oregon
122°51'0"W
122°50'0"W
122°49'0"W
122°48'0"W
43°57'0"N
43°56'0"N
43°55'0"N
Middle Fork Willamette River
Pengra Rd
Fall Creek
Place Rd
3B – Elijah Bristow State Park Berry Slough
3C – Elijah Bristow State Park Northeast Slough
3D – Elijah Bristow State Park Island Pond
Lost Creek
58
Dexter Rd
(Dexter)
Oregon
N
Kilometers
0 0.4 0.8 1.2 1.6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road

(24) Unit 3E: Dexter Reservoir RV Alcove—DEX3, Lane County, Oregon.

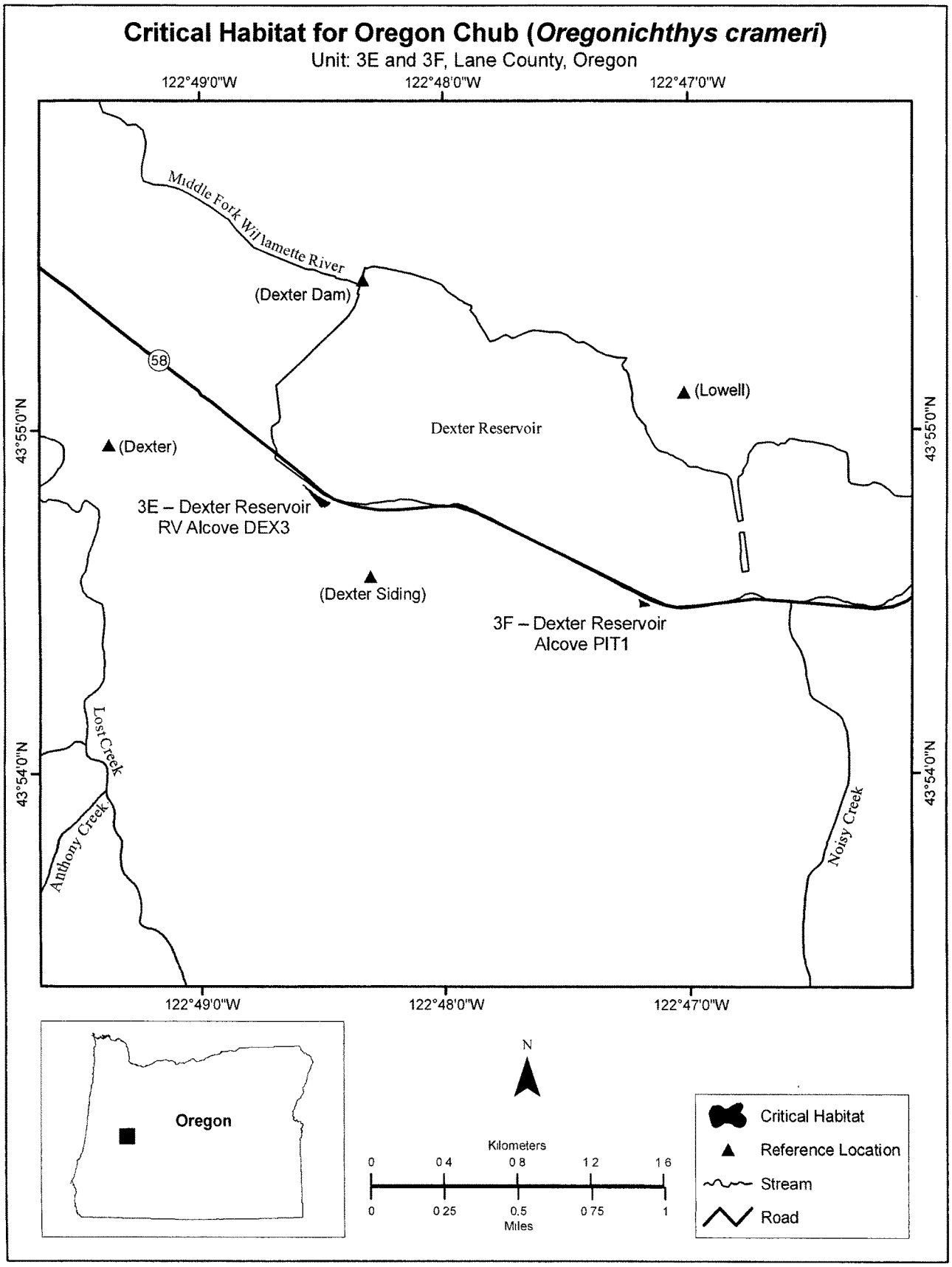
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 3E is found at paragraph (25)(ii) of this entry.

(25) Unit 3F: Dexter Reservoir Alcove—PIT1, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

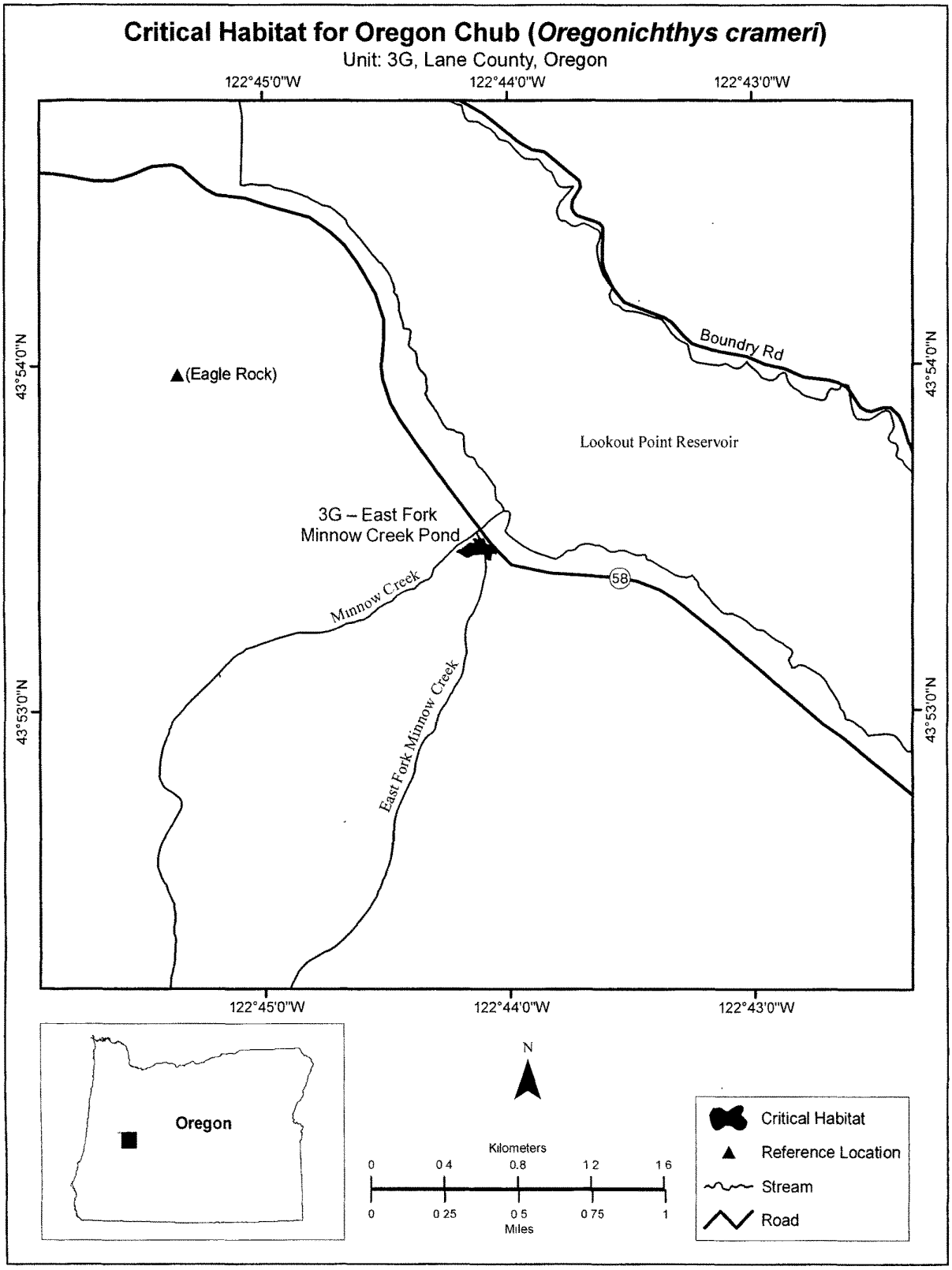
(ii) **Note:** Map of Units 3E and 3F of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (*Oregonichthys crameri*)
Unit: 3E and 3F, Lane County, Oregon
122°49'0"W
122°48'0"W
122°47'0"W
43°55'0"N
43°54'0"N
Middle Fork Willamette River
(Dexter Dam)
58
(Lowell)
Dexter Reservoir
(Dexter)
3E – Dexter Reservoir
RV Alcove DEX3
(Dexter Siding)
3F – Dexter Reservoir
Alcove PIT1
Lost Creek
Anthony Creek
Noisy Creek
Oregon
N
Kilometers
0 0.4 0.8 1.2 1.6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road

(26) Unit 3G: East Fork Minnow Creek Pond, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

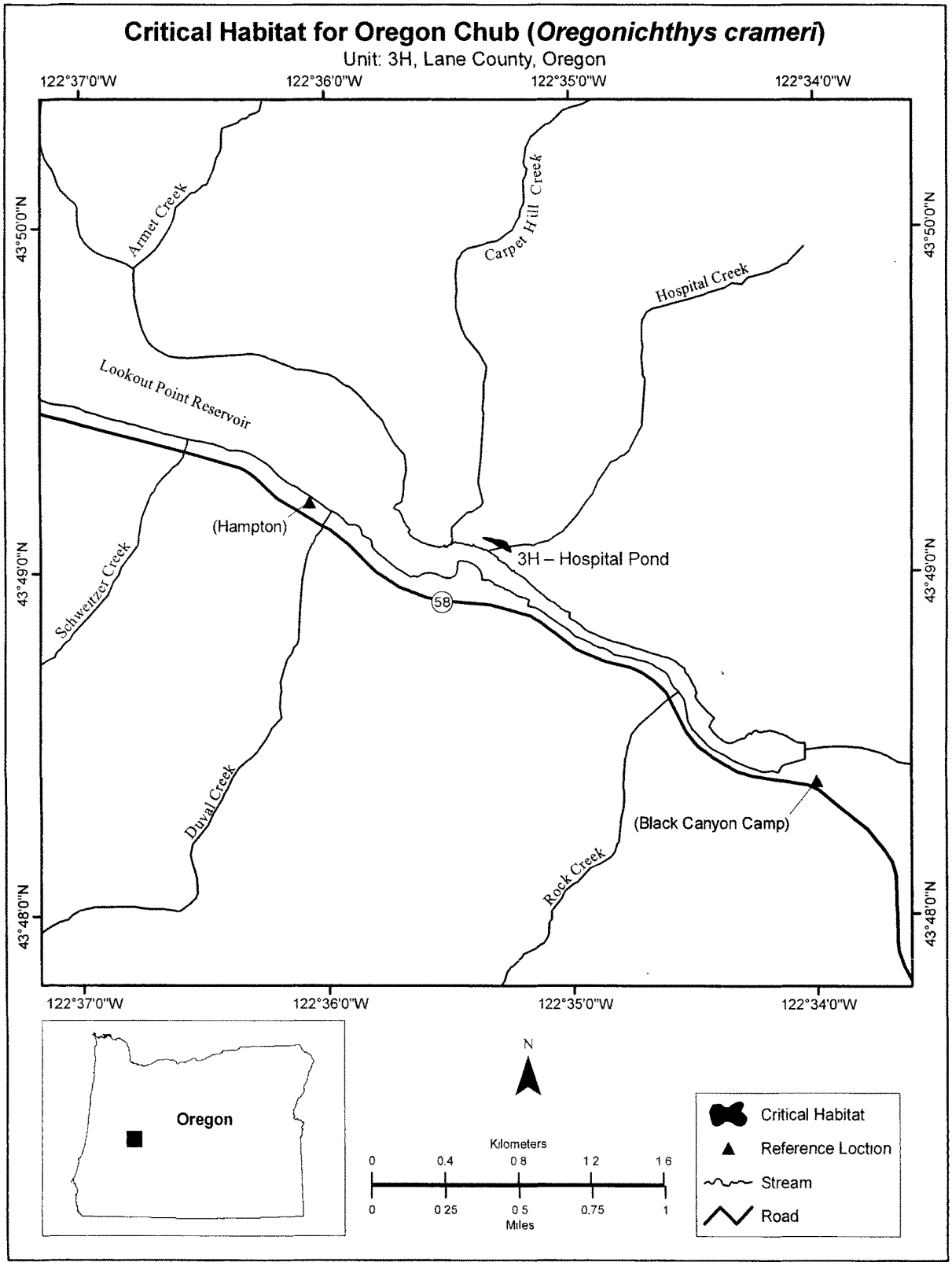
(ii) **Note:** Map of Unit 3G Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(27) Unit 3H: Hospital Pond, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 3H Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



(28) Unit 3I: Shady Dell Pond, Lane County, Oregon.

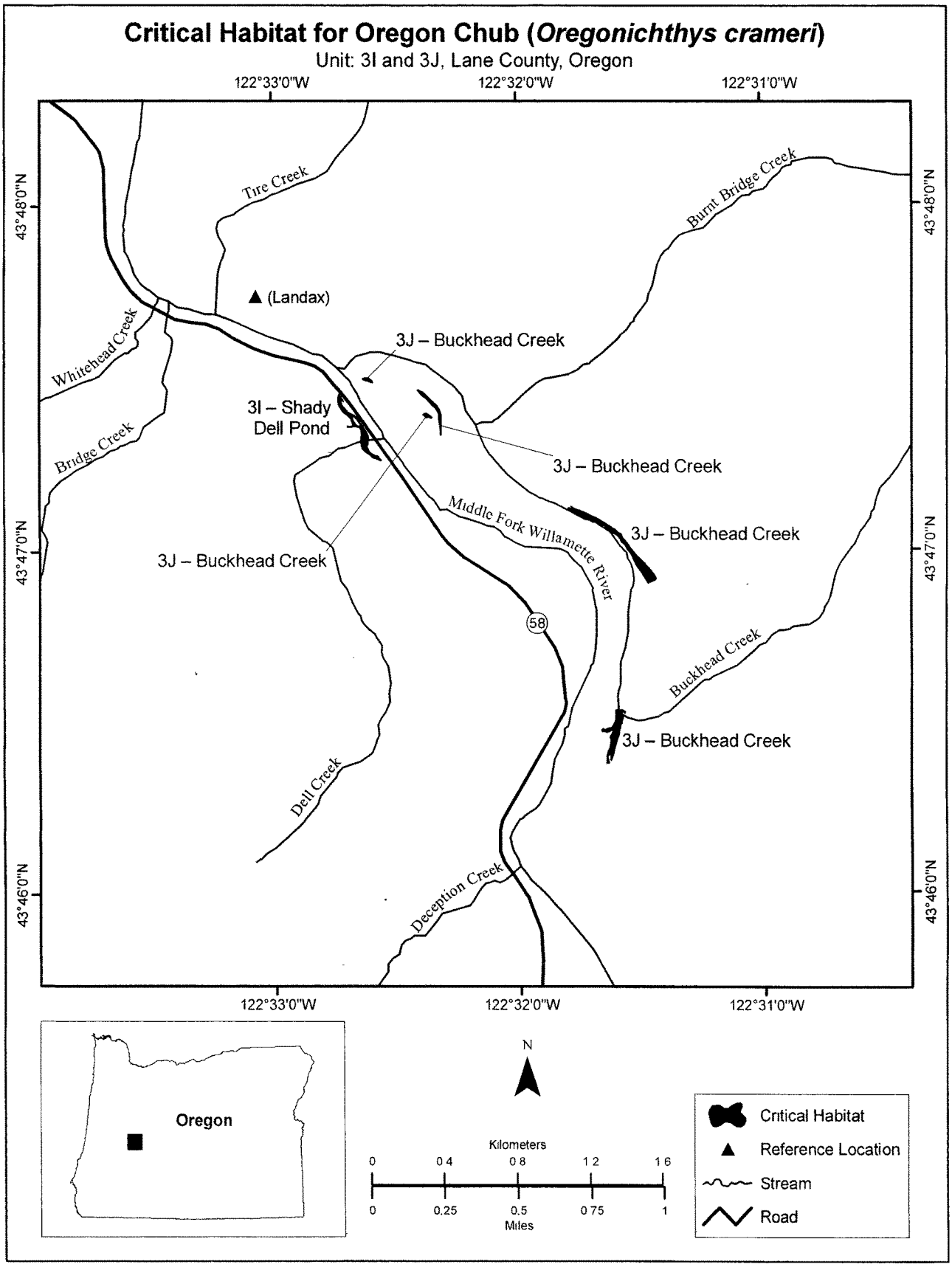
(i) [Reserved for textual description of unit.]

(ii) **Note:** A map showing critical habitat unit 3I is found at paragraph (29)(ii) of this entry.

(29) Unit 3J: Buckhead Creek, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

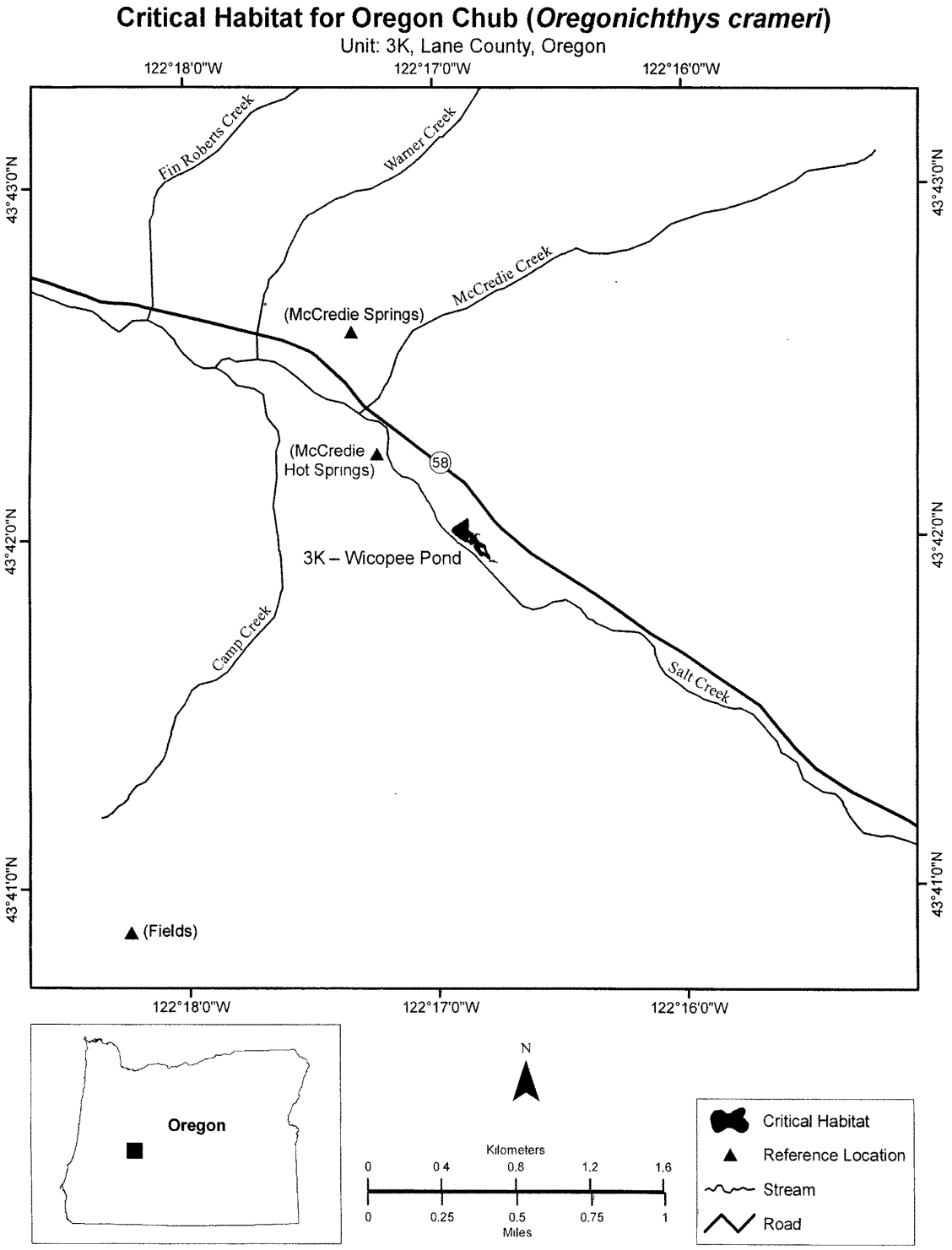
(ii) **Note:** Map of Units 3I and 3J of critical habitat for Oregon chub (*Oregonichthys crameri*) follows:


Critical Habitat for Oregon Chub (*Oregonichthys crameri*)
Unit: 3I and 3J, Lane County, Oregon
122°33'0"W
122°32'0"W
122°31'0"W
43°48'0"N
43°47'0"N
43°46'0"N
Tire Creek
Burnt Bridge Creek
(Landax)
Whitehead Creek
3J – Buckhead Creek
3I – Shady Dell Pond
Bridge Creek
3J – Buckhead Creek
Middle Fork Willamette River
3J – Buckhead Creek
3J – Buckhead Creek
58
Buckhead Creek
3J – Buckhead Creek
Dell Creek
Deception Creek
Oregon
N
Kilometers
0 0.4 0.8 1.2 1.6
0 0.25 0.5 0.75 1
Miles
Critical Habitat
Reference Location
Stream
Road

(30) Unit 3K: Wicopee Pond, Lane County, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Unit 3K Critical Habitat for Oregon Chub (*Oregonichthys crameri*) follows:



* * * * *

Dated: February 26, 2009.

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9–4528 Filed 3–9–09; 8:45 am]

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