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# Presidential Documents

Title 3—

The President

Memorandum of June 12, 2009

## Memorandum for the Heads of Executive Departments And Agencies

### National Policy for the Oceans, Our Coasts, And the Great Lakes

The oceans, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. We have a stewardship responsibility to maintain healthy, resilient, and sustainable oceans, coasts, and Great Lakes resources for the benefit of this and future generations.

Yet, the oceans, coasts, and Great Lakes are subject to substantial pressures and face significant environmental challenges. Challenges include water pollution and degraded coastal water quality caused by industrial and commercial activities both onshore and offshore, habitat loss, fishing impacts, invasive species, disease, rising sea levels, and ocean acidification. Oceans both influence and are affected by climate change. They not only affect climate processes but they are also under stress from the impacts of climate change. Renewable energy, shipping, and aquaculture are also expected to place growing demands on ocean and Great Lakes resources. These resources therefore require protection through the numerous Federal, State, and local authorities with responsibility and jurisdiction over the oceans, coasts, and Great Lakes.

To succeed in protecting the oceans, coasts, and Great Lakes, the United States needs to act within a unifying framework under a clear national policy, including a comprehensive, ecosystem-based framework for the longterm conservation and use of our resources.

In order to better meet our Nation's stewardship responsibilities for the oceans, coasts, and Great Lakes, there is established an Interagency Ocean Policy Task Force (Task Force), to be led by the Chair of the Council on Environmental Quality. The Task Force shall be composed of senior policy-level officials from the executive departments, agencies, and offices represented on the Committee on Ocean Policy established by section 3 of Executive Order 13366 of December 17, 2004. This Task Force is not meant to duplicate that structure, but rather is intended to be a temporary entity with the following responsibilities:

1. Within 90 days from the date of this memorandum, the Task Force shall develop recommendations that include:

a. A national policy that ensures the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhances the sustainability of ocean and coastal economies, preserves our maritime heritage, provides for adaptive management to enhance our understanding of and capacity to respond to climate change, and is coordinated with our national security and foreign policy interests. The recommendations should prioritize upholding our stewardship responsibilities and ensuring accountability for all of our actions affecting ocean, coastal, and Great Lakes resources, and be consistent with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

b. A United States framework for policy coordination of efforts to improve stewardship of the oceans, our coasts, and the Great Lakes. The Task Force should review the Federal Government's existing policy coordination framework to ensure integration and collaboration across jurisdictional lines in meeting the objectives of a national policy for the oceans, our coasts, and the Great Lakes. This will include coordination with the work of the National Security Council and Homeland Security Council as they formulate and coordinate policy involving national and homeland security, including maritime security. The framework should also address specific recommendations to improve coordination and collaboration among Federal, State, tribal, and local authorities, including regional governance structures.

c. An implementation strategy that identifies and prioritizes a set of objectives the United States should pursue to meet the objectives of a national policy for the oceans, our coasts, and the Great Lakes.

2. Within 180 days from the date of this memorandum, the Task Force shall develop, with appropriate public input, a recommended framework for effective coastal and marine spatial planning. This framework should be a comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal, and Great Lakes resources consistent with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

3. The Task Force shall terminate upon the completion of its duties.

The Task Force's recommendations and frameworks should be cost effective and improve coordination across Federal agencies.

This memorandum covers matters involving the oceans, the Great Lakes, the coasts of the United States (including its territories and possessions), and related seabed, subsoil, and living and non-living resources.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, regulatory, and legislative proposals.

The Chair of the Council on Environmental Quality is hereby authorized and directed to publish this memorandum in the *Federal Register*.

[FR Doc. E9–14338

Filed 6–16–09; 8:45 am]

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8391 of June 11, 2009**

## Flag Day and National Flag Week, 2009

**By the President of the United States of America**

**A Proclamation**

In the midst of a war for our Nation's independence, on June 14, 1777, the Second Continental Congress adopted a flag as a symbol of our fledgling Union. The Congress resolved that the flag be ''thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation.'' For generations to come, this pattern would serve as a compass bearing toward equality and justice for all.

Our flag's journey has been long. It has seen our Nation through war and peace, triumph and tragedy. It flew above the walls of Fort Sumter, South Carolina, at the outset of the Civil War. It stood on Mount Suribachi on the island of Iwo Jima during World War II. During the Civil Rights Movement, determined protesters on the streets of Selma, Alabama, proudly displayed its colors. Following the attacks of September 11, 2001, Old Glory flew over the southwestern wall of the Pentagon and the rubble of the World Trade Center. Today, the men and women of the United States Armed Forces bear our flag as they serve bravely around the world.

The flag is still more than a historical symbol: it is part of our culture. In our schools children pledge allegiance to our flag and recite the ideals upon which our Nation was founded. Families sit on their front porches under a billowing Stars and Stripes. And each day as the flag is raised above military installations and government buildings, we are reminded of the great sacrifices that have been made in defense of our Nation.

The Stars and Stripes tells our Nation's story and embodies its highest ideals. Its display reminds us of America's promise and guides us toward a brighter tomorrow.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested the President to issue an annual proclamation calling for a national observance and for the display of the flag of the United States on all Federal Government buildings. In a second joint resolution approved June 9, 1966, as amended (80 Stat. 194), the Congress requested the President to issue annually a proclamation designating the week during which June 14 falls as ''National Flag Week'' and called upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim June 14, 2009, as Flag Day and the week beginning June 14, 2009, as National Flag Week. I direct the appropriate officials to display the flag of the United States on all Federal Government buildings during the week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes at their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, set aside by the Congress (89 Stat. 211) as a time to honor America, celebrate our heritage in public gatherings and activities, and recite publicly the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

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Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8392 of June 12, 2009**

## National Oceans Month, 2009

**By the President of the United States of America**

**A Proclamation**

Oceans are the Earth's dominant feature. They cover more than 70 percent of the planet's surface and affect our lives in a variety of ways. This month we celebrate the wonder of the oceans, and we commit to protecting and sustaining them for current and future generations.

The oceans are critical to supporting life. From the abyssal plains of the Pacific to the shallow coral reefs and seagrass beds of the Florida Keys, oceans support an incredible diversity of marine life and ecosystems. The base of the oceanic ecosystem provides most of the oxygen we breathe, so oceans are critical to our survival. These bodies of water also drive weather patterns and affect climate.

Our Nation's economy relies heavily on the oceans. Goods and services are transported across them constantly. They support countless jobs in an array of industries, including fishing, tourism, and energy. The economies of entire regions depend on the oceans.

The United States has been a leader in exploring and protecting this critical resource. We have gained new insights into the ocean ecosystems through research and monitoring. We have promoted innovative conservation efforts, such as setting aside special areas as national marine sanctuaries. We have also reduced overfishing, made great strides in reducing coastal pollution, and helped restore endangered species and degraded habitats.

My Administration continues to build upon this progress, and we are taking a more integrated and comprehensive approach to developing a national ocean policy that will guide us well into the future. This policy will incorporate ecosystem-based science and management and emphasize our public stewardship responsibilities. My Administration also is working to develop a systematic marine spatial planning framework for the conservation and sustainable use of ocean resources. I am committed to protecting these resources and ensuring accountability for actions that affect them.

During National Oceans Month, we celebrate these vast spaces and the myriad ways they sustain life. We also pledge to preserve them and commend all those who are engaged in efforts to meet this end.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2009 as National Oceans Month. I call upon all Americans to learn more about the oceans and what can be done to conserve them.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–14341
Filed 6–16–09; 8:45 am]
Billing code 3195–W9–P

# Rules and Regulations

Federal Register
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Wednesday, June 17, 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 532

**RIN 3206–AL77**

### Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas; Corrections

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Corrections to final rule.

**SUMMARY:** The U.S. Office of Personnel Management published a final rule in the **Federal Register** on May 4, 2009 (74 FR 20405), redefining certain appropriated fund Federal Wage Systems wage areas. This document corrects three errors in that final rule.

**DATES:** *Effective Date:* June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** on May 4, 2009 (74 FR 20405), the U.S. Office of Personnel Management (OPM) inadvertently omitted Troup County, GA, from the area of application of the Columbus, GA, Federal Wage System (FWS) wage area. Troup County should have been listed immediately following Taylor County.

OPM inadvertently listed McDonald County, MO, as part of the area of application of the Southern Missouri FWS wage area. McDonald County should not have been listed because OPM had previously redefined this county to the Tulsa, OK, FWS area of application in a final rule issued on February 9, 2009 (74 FR 6351).

The final regulations listed Washabaugh County, SD, as part of the area of application of the Eastern South Dakota FWS wage area. Washabaugh County should not have been listed because it no longer exists, having merged with Jackson County, SD, in 1983.

This document corrects the final regulation by revising the listings for the Columbus, GA, Southern Missouri, and Eastern South Dakota wage areas.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Charles D. Grimes III,**

*Deputy Associate Director for Performance and Pay Systems.*

■ Accordingly, the U.S. Office of Personnel Management is correcting 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix C—[Amended]**

■ 2. Amend appendix C to subpart B of part 532 by adding ''Troup'' in between ''Taylor'' and ''Webster'' under the area of application for the State of Georgia in the Columbus, GA, wage area.

■ 3. Amend appendix C to subpart B of part 532 by removing ''McDonald'' under the area of application for the State of Missouri in the Southern Missouri wage area.

■ 4. Amend appendix C to subpart B of part 532 by removing ''Washabaugh'' under the area of application for the State of South Dakota in the Eastern South Dakota wage area.

[FR Doc. E9–14127 Filed 6–16–09; 8:45 am]
BILLING CODE 6325–39–P

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 619, 620, and 621

**RIN 3052–AC35**

### Definitions; Disclosure to Shareholders; Accounting and Reporting Requirements; Disclosure and Accounting Requirements

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) issues this final rule amending FCA's regulations related to disclosure and reporting practices of Farm Credit System (System) institutions. This rule updates references to accounting terminology, streamlines requirements for filing quarterly reports and the content of the annual report to shareholders, and updates the requirements for maintaining an allowance for loan losses. The amendments ensure that FCA regulations are consistent with System structural changes and are updated to include changes to accounting and reporting standards.

**DATES:** *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Thomas R. Risdal, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or Robert Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:**

**I. Objectives**

The objectives of this final rule are to:

- Clarify FCA regulations related to disclosure and reporting practices of System institutions; and
- Ensure that FCA regulations are consistent with System structural changes and updated to include changes to accounting and reporting standards.

**II. Background**

The Farm Credit Amendments Act of 1985 (1985 Amendments) [1] added provisions to the Farm Credit Act of 1971, as amended (Act),[2] requiring FCA to regulate the disclosure and reporting practices of System institutions. In keeping with this provision, we published a proposed regulation in the **Federal Register** (73 FR 70921) on November 24, 2008, to amend parts 619,

[1] Public Law 99–205, 99 Stat. 1678, Dec. 23, 1985.
[2] Public Law 92–181, 85 Stat. 583, Dec. 10, 1971.

620, and 621 affecting references to accounting terminology, requirements for the content of the annual report to shareholders, requirements for filing quarterly reports to shareholders, and requirements for maintaining an allowance for loan losses. We also proposed certain other clarifications and technical changes to our reporting and disclosure regulations. The proposed rule was published with a 60-day comment period, which closed on January 23, 2009.

**III. Comments and Our Response**

We received three comment letters on the proposed rule. Of the comment letters received, one was from the Federal Farm Credit Banks Funding Corporation (Funding Corporation) on behalf of the Farm Credit System's Accounting Standards Workgroup, one was from the Farm Credit Council (FCC) acting for its membership, and one was from a System association. In general, the commenters supported the proposed rule, but suggested additional changes to our rules. The commenters stated the suggested changes would allow for additional flexibility in meeting disclosure requirements. We discuss the comments to our proposed rule and provide our responses below. Those provisions of the proposed rule that did not receive comments are finalized as proposed.

*A. Generally Accepted Auditing Standards [§§ 619.9270(e) and 621.2(d)]*

We received no comments on our proposal to replace the language in § 621.2(d) referring to Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) with a reference to generally accepted auditing standards. We also received no comments on our proposed conforming change in § 619.9270(e) to replace the reference to AICPA with a reference to the authoritative body governing overall audit quality. We finalize these changes as proposed.

*B. Signatures on Financial Reports [§ 620.3(b)(3)]*

We received no comments on our proposal to remove the reference to reports of condition and performance from the signature requirements of § 620.3(b)(3). We finalize the change as proposed.

*C. Contents of the Annual Report to Shareholders; Incorporation by Reference [§ 620.5(a) Through (e)]*

We received three comments supporting our proposal to allow the information required by § 620.5(a) through (e) to be incorporated by reference to the Management's Discussion and Analysis (MD&A) section. The commenters also suggested that we allow incorporation by reference in other areas of the report, not just the MD&A.

While we received support for the proposed change to § 620.5, we have determined it is unnecessary to change our existing rules and withdraw the proposed change. We originally proposed a change to allow incorporation in the MD&A the annual report items contained in paragraphs (a) through (e) of § 620.5. We, in part, made this proposal because of the existing introductory language of § 620.5 stating that the annual report ''must contain the following items in substantially the same order.'' However, existing § 620.2(d) provides that information in any part of the annual report may be incorporated by reference in answer to any other item of the report. In consideration of this language and the introductory language of § 620.5, we believe institutions are already authorized under the provisions of § 620.2(d) to incorporate the information of any required section of the annual report in another section, if the institution desires to do so. However, to ensure compliance the introductory language of § 620.5, institutions applying the provisions of § 620.2(d) will need to maintain the annual report section headings, as identified in § 620.5, and state under the heading where the ''answer'' may be found, i.e., the location where the reader may find the information.

*D. Description of Business; Significant Developments [§ 620.5(a)(4)]*

We received no comments on the proposal to require the disclosure of significant developments that had or could have material impact on patronage and dividends. We finalize the change as proposed.

However, we received three comments suggesting that the current requirement to report significant developments for the last 5 years be limited to the last 3 years. The commenters explained that such a change would be consistent with the requirement in § 620.5(m) to furnish financial statements and related footnotes for the last 3 years. The commenters also explained that the continuation of the 5-year disclosure requirement would provide no additional relevant information to the reader. While we consider the suggested change to our rule worth additional consideration, we did not propose this change. We cannot, in this final rulemaking, make the change without providing additional notice and comment because it does not constitute a logical outgrowth of the proposed rulemaking. We will, however, consider this issue in a future rulemaking.

*E. Description of Business; the Institution's Interdependent Relationship With its Funding Bank [§ 620.5(a)(10)]*

We proposed removing language that may be interpreted as limiting disclosures of certain interdependent relationships, including removal of paragraph (a)(10)(v). We also proposed new language for paragraph (a)(10) that captures a broader relationship between associations and their funding banks, including the elements of paragraph (a)(10)(v). We received no comments on our proposal and finalize these changes as proposed.

*F. Description of Liabilities; Description of Statutory Responsibility for Repayment of Obligations Issued by the Farm Credit System Financial Assistance Corporation [§ 620.5(e)(4)]*

We received no comments on our proposal to remove a remaining reference in § 620.5(e)(4) to the Farm Credit System Financial Assistance Corporation (FAC), which is no longer a chartered entity. We finalize this change as proposed.

*G. Selected Financial Data; Associations That are not Direct Lender Associations [§ 620.5(f)(2)]*

We received no comments on our proposal to remove § 620.5(f)(2) addressing associations that are *not* direct lender associations. All System associations are now direct lenders. We finalize this change as proposed.

*H. Description of Funding Sources [§ 620.5(g)(3)(i)(A)]*

We received no comments on our proposed clarification that § 620.5(g)(3)(i)(A) applies to all debt obligations held by each System institution, not just the consolidated System-wide debt and bond obligations. We finalize this change as proposed.

*I. Listing of Directors and Senior Officers and Their Terms of Office [§ 620.5(h)(1)]*

We received no comments on the proposal to require disclosure of the date each senior officer commenced employment in his/her current position. We are finalizing this change as proposed.

We did receive three comments on this section suggesting changes not otherwise proposed. The commenters suggested requiring disclosure of prior

positions held, if in the current position less than 5 years, explaining that it would provide useful information. The commenters contend that without this information the experience of the senior officer would be understated. We believe the commenters' concerns are sufficiently addressed by the requirements in § 620.5(h)(2). However, if institutions wish to disclose more information than that required by regulation, such additional disclosures may be made, provided that the disclosures comply with § 620.3(a).

*J. Director Compensation [§ 620.5(i)(1)]*

We received no comments on our proposal to clarify that the disclosures required by § 620.5(i)(1) apply to all directors who served in that capacity during the fiscal year, including those who resigned from the board or whose terms expired during the fiscal year. We finalize this change as proposed.

*K. Fees Paid to the Qualified Public Accountant Engaged to Conduct the Financial Statement Audit [§ 620.5(l)(2)]*

We received no comments on our proposal clarifying that disclosure of fees paid to the qualified public accountant applies only to the qualified public accountant engaged to conduct the audit of the institution's financial statement. We finalize this change as proposed.

*L. Preparing and Publishing the Quarterly Report [§ 620.10(a)]*

We received no comments on our proposals to require institutions to electronically file the quarterly report with the FCA and publish the report on the institution's Web site. We also received no comments on our proposal to replace ''Farm Credit bank and direct lender association'' with ''institution'' in § 620.10. We finalize these changes as proposed.

*M. Interim Financial Statements and Pro Forma Presentations Subsequent to Consummation of a Business Combination [§ 620.11(b)(4) and (b)(5)], and Reporting Accounting Changes and Error Corrections [§ 620.11(b)(6) and (b)(7)]*

We received no comments on our proposal to remove § 620.11(b)(4) through (7) due to recent changes in accounting standards. We finalize these changes as proposed.

*N. Independent Public Accountant [§§ 620.11(e) and 620.21(f)]*

We received no comments on our proposal to replace the references to ''independent public accountant'' with ''qualified public accountant or external auditor'' in §§ 620.11(e) and 620.21(f). We finalize these changes as proposed.

*O. Accounting for the Allowance for Loan Losses and Chargeoffs [§ 621.5(a)]*

We received no comments on our proposal to revise § 621.5(a) by clarifying that a System institution's allowance for loan losses should be determined in accordance with GAAP. We finalize this change as proposed.

*P. Reports of Condition and Performance; Applicability and General Instructions; Filing of Reports [§ 621.12(c)]*

We received no comments on our proposal to require institutions to file their Call Reports electronically in accordance with the instructions prescribed by the FCA. We finalize this change as proposed.

*Q. Technical Corrections [§ 620.5]*

We received no comments on our proposal to replace the word ''financing'' with the word ''financial''. We finalize this change as proposed.

**IV. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

**List of Subjects in 12 CFR Parts 619, 620 and 621**

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

■ For reasons stated in the preamble, parts 619, 620, and 621 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

## PART 619—DEFINITIONS

■ 1. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.17, 5.18, 5.19, 7.0, 7.1, 7.6, 7.8, and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2252, 2253, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f).

■ 2. Section 619.9270 is amended by revising the second sentence of paragraph (e) to read as follows:

**§ 619.9270 Qualified Public Accountant or External Auditor.**

* * * * *

(e) * * * For the purposes of this definition, the term ''independent'' has the same meaning as under the rules and interpretations of the authoritative body governing overall audit performance. * * *

## PART 620—DISCLOSURE TO SHAREHOLDERS

■ 3. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

### Subpart A—General

■ 4. Section 620.3 is amended by revising paragraph (b)(3) as follows:

**§ 620.3 Accuracy of reports and assessment of internal control over financial reporting.**

* * * * *

(b) * * *

(3) A board member formally designated by action of the board to certify reports on behalf of individual board members.

* * * * *

### Subpart B—Annual Report to Shareholders

■ 5. Amend § 620.5 as follows:

■ a. Remove the word ''financing'' and add in its place the word ''financial'' each place it appears in paragraphs (e)(2), (f) heading and introductory text, (f)(1)(iii) heading, (g) heading and introductory text, (g)(1)(iv), (g)(2)(ii), (g)(2)(vi), (j)(3)(ii), and (m)(1);

■ b. Revise paragraphs (a)(4), (a)(10) introductory text, (g)(3)(i)(A), (h)(1), (i)(1) introductory text, and the first sentence of paragraph (l)(2);

■ c. Remove paragraphs (a)(10)(v), (e)(4) and (f)(2);

■ d. Add the word ''and'' at the end of paragraph (a)(10)(iii);

■ e. Remove ''; and'' and add a period at the end of paragraph (a)(10)(iv); and

■ f. Redesignate existing paragraphs (f)(3) and (f)(4) as newly designated paragraphs (f)(2) and (f)(3).

**§ 620.5 Contents of the annual report to shareholders.**

* * * * *

(a) * * *

(4) Any significant developments within the last 5 years that had or could have a material impact on earnings, interest rates to borrowers, patronage, or dividends, including, but not limited to, changes in the reporting entity, changes

in patronage policies and practices, and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or from any other source;

* * * * *

(10) For associations, in a separate section of the annual report, discuss the interdependent relationship between the association and its funding bank, including, but not limited to, the financial relationship, a service provider relationship, other material operational relationships, and other specific issues or areas that create a material interdependent relationship between the association and its funding bank. This separate section may incorporate by reference information from other sections of the annual report. At a minimum, the separate section must include the statement required by § 620.2(h)(2)(i) of this part and the following information required elsewhere in this section, if applicable:

* * * * *

(g) * * *

(3) * * *

(i) * * *

(A) Describe the average and yearend amounts, maturities, and interest rates on outstanding consolidated System-wide debt obligations, bond obligations, or any other obligations used to fund the institution's lending operations.

* * * * *

(h) * * *

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

* * * * *

(i) * * *

(1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation). Noncash compensation with an annual aggregate value of less than $5,000 does not have to be reported. State the total cash and reportable noncash compensation paid to all directors as a group during the last fiscal year. For the purposes of this paragraph, disclosure of compensation paid to and days served by directors applies to any director who served in that capacity at any time during the reporting period. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

* * * * *

(2) Disclose the total fees, by the category of services provided, paid during the reporting period to the qualified public accountant engaged to conduct the institution's financial statement audit. * * *

* * * * *

## Subpart C—Quarterly Report

■ 6. Amend § 620.10 by revising paragraph (a) to read as follows:

### § 620.10 Preparing the quarterly report.

(a) Each institution of the Farm Credit System must:

(1) Prepare and send, to the Farm Credit Administration, an electronic copy of its quarterly report within 40 calendar days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution; and

(2) Publish a copy of its quarterly report on its Web site when it electronically sends the report to the Farm Credit Administration.

* * * * *

### § 620.11 [Amended]

■ 7. Amend § 620.11 as follows:

■ a. Remove paragraphs (b)(4) through (b)(7);

■ b. Redesignate existing paragraph (b)(8) as newly designated paragraph (b)(4); and

■ c. Remove the words ''independent public accountant,'' ''an independent public accountant,'' and ''the independent accountant'' and add in their place, the words ''a qualified public accountant or external auditor'' in each place they appear in paragraph (e) and its heading.

## Subpart E—Annual Meeting Information Statement

■ 8. Amend § 620.21 by revising the heading and paragraph (f) to read as follows:

### § 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting or director elections.

* * * * *

(f) *Relationship with qualified public accountant or external auditor.* If an institution of the Farm Credit System has had a change or changes in its qualified public accountant or external auditor since the last annual report to shareholders, or if a disagreement with a qualified public accountant or external auditor has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

## PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

■ 9. The authority citation for part 621 continues to read as follows:

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11); sec. 514 of Public Law 102–552.

## Subpart A—Purpose and Definitions

■ 10. Amend § 621.2 by revising paragraph (d) to read as follows:

### § 621.2 Definitions.

* * * * *

(d) *Generally accepted auditing standards* means the standards and guidelines that are generally accepted in the United States of America and that are adopted by the authoritative body that governs the overall quality of audit performance.

* * * * *

## Subpart B—General Rules

■ 11. Amend § 621.5 by revising paragraph (a) to read as follows:

### § 621.5 Accounting for the allowance for loan losses and chargeoffs.

* * * * *

(a) Maintain at all times an allowance for loan losses that is determined according to generally accepted accounting principles.

* * * * *

## Subpart D—Report of Condition and Performance

■ 12. Amend § 621.12 by revising paragraph (c) as follows:

### § 621.12 Applicability and general instructions.

* * * * *

(c) All reports of condition and performance shall be submitted electronically in accordance with the instructions prescribed by the Farm Credit Administration and located on its Web site.

Dated: June 12, 2009.

**Gaye Calhoun,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. E9–14255 Filed 6–16–09; 8:45 am]

BILLING CODE 6705–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**19 CFR Parts 101 and 122**

**[USCBP–2005–0091; CBP Dec. 09–19]**

## Extension of Port Limits of Dayton, OH, and Termination of the User-Fee Status of Airborne Airpark in Wilmington, OH

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Homeland Security (DHS) regulations pertaining to Customs and Border Protection's field organization by extending the geographic limits of the port of Dayton, Ohio, to include the Airborne Airpark in Wilmington, Ohio. The extension of the port limits of Dayton, Ohio, is due to the closing of express consignment operations at Dayton International Airport, and the expansion of express consignment operations at Airborne Airpark located in Wilmington, Ohio. The user-fee status of Airborne Airpark is terminated. This change is part of a continuing program to more efficiently utilize Customs and Border Protection's personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** *Effective Date:* July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Wendy M. Cooper, Office of Field Operations, 202–344–2057.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (71 FR 67313) on November 21, 2006, the Department of Homeland Security (DHS), Customs and Border Protection (CBP), proposed to amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to extend the limits of the port of Dayton, Ohio, to include the Airborne Airpark in Wilmington, Ohio. CBP also proposed to delete ''Wilmington, Airport'' from the list of user-fee airports at 19 CFR 122.15(b). (As explained in the NPRM, Airborne Park is currently listed, incorrectly, as ''Wilmington Airport'' in the list of user-fee airports).

The current port limits of the Dayton, Ohio, port of entry are described in Treasury Decision (T.D.) 76–77, effective March 3, 1976. In the proposed rule of November 21, 2006, CBP explained that these limits include the territory within the city limits of Dayton, Ohio, as well as the territory within the township limits of the adjacent townships of Butler, Harrison, Wayne, and Mad River, Ohio. CBP further explained that there had been two express consignment operations in the Dayton area: Menlo Worldwide Forwarding/Emery at Dayton International Airport and Airborne Express at Airborne Airpark in Wilmington, Ohio. The Menlo Worldwide Forwarding/Emery operation was within the Port of Dayton at the north edge of the current port boundaries, and Airborne Airpark was southeast of the current boundaries in Wilmington, Ohio. UPS purchased Menlo Worldwide Forwarding, shut down the Emery operation at Dayton International Airport, and has moved the work to their hub located in Louisville, Kentucky. DHL Express (USA) has purchased Airborne Express and has shut down the DHL operations in Cincinnati-Northern Kentucky Airport (CVG) in Covington, Kentucky. DHL Express (USA) opened a new, much larger combined operation at Airborne Airpark in June 2006. In the NPRM, CBP explained that these changes in operations would result in an increase in the demand for CBP services at the Airborne Airpark.

The NPRM proposed to relocate the CBP Dayton port office from its current location at the Dayton International Airport to a new location near the new DHL operation at Airborne Airpark. In the NPRM, CBP stated that it would establish an adequately sized secure storage facility in efficient proximity to Airborne Airpark. CBP explained that these changes would allow for continued efficient operation and supervision of CBP services at the DHL facility.

### II. Analysis of Comments

Four comments were received in response to the Notice of Proposed Rulemaking. All four of the commenters expressed either agreement or no objection concerning the proposed extension of the Port of Dayton boundaries and the termination of the user fee airport status of Airborne Airpark in Wilmington, Ohio.

Three of the four commenters, however, raised objections to CBP plans to relocate the Dayton port office. The reasons for these objections included that they believed the Dayton port office should be in Dayton proper and that shifting the office would have a negative impact on brokers using the services of the port office at the current location.

Although the NPRM stated that if the proposed port limits were adopted as a final rule, the location of the port office in Dayton would be moved, the location of a port office within a port is a management decision by an agency that does not require public notice and comment. The current port office for Dayton is located in Vandalia, Ohio where Dayton International Airport is located—not Dayton. CBP routinely relocates port offices to more efficiently utilize CBP's available personnel, facilities, and resources, and CBP believes that the movement of the office to the new proposed location will maximize efficiency. Also, even though the port office will be moved from its current location, CBP plans to maintain staff at the current location at Dayton International Airport so that brokers may continue to transact business there if they so choose.

### III. Conclusion

After consideration of the comments received, CBP is extending the geographical limits of the port of Dayton, Ohio, and terminating the user-fee status of Airborne Airpark in Wilmington, Ohio as proposed in the notice. With the closing of express consignment operations at Dayton International Airport and the expansion of such operations at Airborne Park, CBP believes that extending the geographic limits of the port of Dayton, Ohio to include Airborne Park will enable CBP to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. The port of entry description of Dayton, Ohio, and the list of user-fee airports will be revised as proposed in the notice.

### IV. Port Description of Dayton, Ohio

The port limits of Dayton, Ohio, expanded to include the Airborne Park, are as follows: Beginning at the point where Federal Interstate Highway 75 crosses the Montgomery County—Miami County line; then west along the Montgomery County line to the point where Frederick Pike intersects the Montgomery County line; then south and east on Frederick Pike to the intersection with Dixie Drive; then south to Keowee Street, then south to Federal Interstate Highway 75 to the point where I–75 intersects the Montgomery County—Warren County line; then east along the county line (which becomes the Greene County—Warren County line) to the Clinton County line; then south along the Clinton County line to the intersection with Ohio State Route 350; then east on

Route 350 to the intersection with Ohio State Route 73; then north and west on Route 73 to the intersection with U.S. Route 22; then west along Route 22 to U.S. Highway 68; then north and west on U.S. 68 to the intersection with U.S. Highway 35; then west and north on U.S. 35 to Interstate Highway 675; then north and east on I–675 to the intersection with Federal Interstate Highway 70; then west on I–70 to the intersection with the Montgomery County line; and then north and west along the Montgomery County line to the point of beginning.

**V. Authority**

This change is made under the authority of 5 U.S.C. 301; 19 U.S.C. 2, 66, and 1624; and 6 U.S.C. 203.

**VI. Statutory and Regulatory Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

This rule is not considered to be an economically significant regulatory action under Executive Order 12866 because it will not result in the expenditure of over $100 million in any one year. The change is intended to expand the geographical boundaries of the Port of Dayton, Ohio, and make it more easily identifiable to the public and to terminate the user fee airport status of Airborne Airpark in Wilmington, Ohio. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule does not directly regulate small entities. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the expanded geographical area of the new port limits, this rule should confer benefits to CBP, carriers, importers, and the general public.

Because this rule does not directly regulate small entities, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

**VII. Signing Authority**

The signing authority for this document falls under 19 CFR 0.2(a) because the port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

**List of Subjects**

*19 CFR Part 101*

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

*19 CFR Part 122*

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

**Amendments to CBP Regulations**

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101) and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

## PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

**§ 101.3 [Amended]**

■ 2. The list of ports in § 101.3(b)(1) is amended by removing from the ''Limits of Port'' column for Dayton, Ohio, the present limits description ''Including territory described in T.D. 76–77'' and adding ''CBP Dec. 09–19'' in its place.

## PART 122—AIR COMMERCE REGULATIONS

■ 3. The general authority for part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

**§ 122.15 [Amended]**

■ 4. The list of user fee airports at 19 CFR 122.15(b) is amended by removing ''Wilmington, Ohio'' from the ''Location'' column and, on the same line, ''Wilmington Airport'' from the ''Name'' column.

Dated: June 10, 2009.

**Janet Napolitano,**

*Secretary.*

[FR Doc. E9–14229 Filed 6–16–09; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF JUSTICE

## Parole Commission

## 28 CFR Part 2

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Parole Commission is promulgating interim rules to implement the District of Columbia Equitable Street Time Credit Amendment Act of 2008. This Act modifies parole laws for District of Columbia offenders by allowing the Parole Commission to terminate the supervision and legal custody of a parolee before the expiration of the parolee's sentence. The Act also modifies the requirement that the parolee lose credit for all time spent on parole when the Commission revokes a parolee's release for violating parole conditions. With these modifications, parole laws for DC offenders are more consistent with similar parole laws governing U.S. Code parole eligible offenders. The Commission is also making a number of conforming amendments to regulations that refer to the functions that are the subject of the new DC law, and editing regulations on the same subjects for U.S. Code parolees to make the regulations simpler and more understandable.

**DATES:** Comments must be received by August 31, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification number USPC–2009–01 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

3. *Fax:* 301–492–5563.

**FOR FURTHER INFORMATION CONTACT:** Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** Under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission assumed parole release and revocation authority over District of Columbia felony offenders, exercising such authority pursuant to the parole laws and regulations of the District of Columbia. DC Code 24–131(c). The Attorney General of the United States must concur in any changes made by the Council of the District of Columbia in these laws and regulations. Id. The Commission has exclusive authority to amend or supplement any regulation that interprets or implements DC parole laws. DC Code 24–131(a)(1).

In December 2008 the DC Council passed the Equitable Street Time Credit Amendment Act of 2008 (hereinafter ''the Act''). Former Attorney General Mukasey concurred in the legislation, and the Mayor of the District of Columbia signed the legislation in January 2009. After a period of congressional review, the Act became effective on May 20, 2009 as DC Law 17–389. The Act makes two significant changes in parole laws for DC offenders. First, Section 3(a) of the Act amends DC Code 24–404 to provide that the Commission may terminate a DC parolee from supervision, and legal custody of the parolee, before the expiration date of the sentence. Under present law, the Commission may only transfer a DC parolee to inactive supervision before the sentence expires. This first change gives the Commission the same authority, and same responsibilities, it presently carries out for Federal parolees under its jurisdiction (see 18 U.S.C. 4211). The Commission is required to conduct an early termination record review for the DC parolee after the parolee serves two years of continuous supervision. If the parolee is not discharged from supervision and the sentence after five years of supervision, the Commission must conduct a five-year termination hearing using the same decision-making standard it uses for Federal parolees, *i.e.,* whether there is a reasonable probability that the parolee will violate any criminal law if he were discharged from the sentence.

The interim rule is almost identical to the current rule governing early termination decisions for Federal parolees. No substantive change is intended from the procedures for Federal parolees. The Commission is adopting the early termination guidelines it now uses for Federal parolees in carrying out its new duties for DC parolees. In doing so, the Commission is eliminating the use of a violence assessment under the guidelines at 28 CFR § 2.80 as a decision-making criterion. This assessment is presently used in the guidelines for transferring a DC parolee from active to inactive supervision. The elimination of the violence assessment is not intended to signal any devaluation of the risk of possible violence as a factor in the Commission's decision. Instead, the risk of future violence will be addressed as a case-specific factor that may warrant a departure from the advisory guidelines. The Commission is also amending the rules at 28 CFR 2.43 (for Federal parolees) and 2.208 (for DC supervised releasees) to conform with this interim rule and the clearer language and simpler format of the new rule.

The legislation applies to all DC parolees now under active or inactive supervision, and any DC prisoner who will be released to parole (including mandatory release) supervision. For those offenders released before the effective date of the Act, the Commission must apply the procedures of the new law within one year of the effective date.

The second significant amendment of DC parole law is found in Section 3(b) of the Act. Under the current version of DC Code 24–406, if parole is revoked, the parole violator must forfeit all time spent on parole, regardless of the nature of the violation. Section 3(b) of the Act amends 24–406 to limit the forfeiture of parole time to those revoked parolees who have incurred a new conviction for an offense punishable by imprisonment, or who have intentionally refused or failed to respond to a request or order of the Commission. The legislation provides for mandatory forfeiture of the parole period if the parolee is convicted of a crime punishable by a prison term of more than one year. If the new conviction carries a possible jail term of one year or less, the Commission has discretion to allow sentence credit if the Commission decides that forfeiture is not necessary to protect the public welfare. This change in forfeiture law brings DC parole laws more in line with the forfeiture provisions for Federal parolees found at 18 U.S.C. 4210(b) and (c), which require parole time forfeiture for a revoked parolee who is convicted of a crime punishable by imprisonment, and permit forfeiture of a period while the parolee absconded from supervision or willfully disobeyed a Commission direction. For now, the Commission has decided not to promulgate guidelines regarding the exercise of discretionary judgment in granting parole time credit to persons convicted of misdemeanor crimes. As its experience develops, the Commission may decide that guidelines are desirable in making this decision. The amendment to the parole time credit laws does not apply to parole periods that have already been revoked and forfeited before the effective date of the Act.

Finally, the Commission is amending a number of other rules to conform with the amendments required by the new law.

## Implementation

The regulations set forth below will be made effective as of the date of publication, and will apply to all persons who are serving sentences imposed for felony crimes under the District of Columbia Code. The Commission has already begun implementing the street time forfeiture provisions of the Act for revocation decisions issued on or after May 20, 2009, the Act's effective date. As noted above, the Act does not disturb the street time forfeiture decisions for DC offenders issued by the Commission before May 20, 2009, and it allows the Commission a period of one year to implement the provisions on early termination of supervision for those DC parolees who were released before the Act's effective date.

## Good Cause Finding

The Commission is making these interim rules effective less than 30 days from the date of this publication for good cause pursuant to 5 U.S.C. 553(d)(3). The effective date of the new Act has already passed and the Commission must immediately implement the new Act to ensure that determinations as to street time credit for revoked parolees are made in accordance with the Act, and that these parolees do not improperly forfeit sentence credit. Delaying the effective date of the rules would not serve the public interest regarding the fair administration of criminal laws, and is not necessary to prepare either the general public or other components of the DC criminal justice system for the implementation of the new Act. Almost

all of the changes required by the Act will be matters for the internal administration of the Commission's functions.

**Executive Order 12866**

The U. S. Parole Commission has determined that these interim rules do not constitute significant rules within the meaning of Executive Order 12866.

**Executive Order 13132**

These regulations 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. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a federalism Assessment.

**Regulatory Flexibility Act**

The interim rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act of 1995**

The rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)**

These rules are not ''major rules'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rules 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 the ability of United States-based companies to compete with foreign based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and Parole.

**The Interim Rule**

Accordingly, the U. S. Parole Commission is adopting the following amendment to 28 CFR part 2.

## PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(l) and 4204(a)(6).

■ 2. The table of contents for 28 CFR part 2 is amended by revising the headings for Sections 2.95 and 2.96 to read as follows:

## Part 2–PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

* * * * *

## Subpart C–District of Columbia Code: Prisoners and Parolees

* * * * *

**§ 2.95 Early termination from supervision.**

**§ 2.96 Order of early termination.**

* * * * *

■ 3. Section 2.43 is revised to read as follows:

**§ 2.43 Early termination.**

(a)(1) Upon its own motion or upon request of a parolee, the Commission may terminate a parolee's supervision, and legal custody over the parolee, before the sentence expires.

(2) The Commission may terminate supervision of a committed youth offender after the offender serves one year on supervision. Upon terminating supervision before the sentence expires, the Commission shall set aside the committed youth offender's conviction and issue a certificate setting aside the conviction instead of a certificate of termination.

(b) Two years after releasing a prisoner on supervision, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends early termination of the parolee's supervision.

(c) Five years after releasing a prisoner on supervision, the Commission shall terminate supervision over the parolee unless the Commission determines, after a hearing, that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. If the Commission does not terminate supervision under this paragraph, the parolee may request a hearing annually thereafter, and the Commission shall conduct an early termination hearing at least every two years.

(d) In calculating the two-year and five-year periods provided in paragraphs (b) and (c) of this section, the Commission shall not include any period of parole before the most recent release, or any period served in confinement on any other sentence.

(e) A parolee may appeal an adverse decision under paragraph (b) of this section under § 2.26 or § 2.27 as applicable.

(f) If the case is designated for the original jurisdiction of the Commission, a decision to terminate supervision under paragraphs (a)(2) and (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made under the provisions of § 2.17.

(g)(1) In determining whether to grant early termination from supervision, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case-specific factors. Termination of supervision is indicated if the parolee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious parole violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious parole violation.

(2) As used in this paragraph, the term ''an incident of new criminal behavior or serious parole violation'' includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results. The Commission shall not terminate supervision of a parolee until it determines the disposition of a pending criminal charge.

(h) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the parolee, or to the parolee's background and criminal history.

■ 4. Section 2.65 is amended by revising paragraph (i) to read as follows:

**§ 2.65 Paroling policy for prisoners serving aggregate U.S. and DC Code sentences.**

* * * * *

(i) Forfeiture of parole time. All time on parole shall be forfeited if required under § 2.52(c) and § 2,105(d) of these regulations. If not, the Commission shall divide the total time on parole according to the proportional relationship of the DC sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the DC sentence pursuant to § 2.105(d). For example, if the parolee is serving a two-year DC Code sentence and a three-year U.S. Code sentence, the DC sentence is two fifths, or 40 percent, of the aggregate sentence (five years). If the parolee was on parole 100 days and parole is revoked for a misdemeanor conviction, a period of 40 days is subject to possible forfeiture under § 2.105(d).

■ 5. Section 2.74 is amended by revising the third sentence of paragraph (c) to read as follows:

**§ 2.74 Decision of the Commission.**

* * * * *

(c) * * *

A decision terminating a parolee early from supervision shall also be based on the concurrence of two Commissioners.

* * * * *

■ 6. Section 2.92 is amended by revising paragraphs (a), (c), and (d) to read as follows:

**§ 2.92 Jurisdiction of the Commission.**

(a) The jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, or upon the early termination of supervision as provided in § 2.95, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of time on parole in the case of revocation.

(b) * * *

(c) When the parolee's sentence expires, the supervision officer shall issue a certificate of discharge to the parolee and to such other agencies as may be appropriate. If the Commission terminates the parolee's supervision early under § 2.95, the Commission shall issue a certificate of discharge for delivery to the parolee by the supervision officer.

(d) An order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the date of expiration of the offender's maximum term, or upon the early termination of supervision under § 2.95.

■ 7. Section 2.95 is revised to read as follows:

**§ 2.95 Early termination from supervision.**

(a) (1) Upon its own motion or upon request of a parolee, the Commission may terminate a parolee's supervision, and legal custody over the parolee, before the sentence expires. (2) The Commission may terminate supervision of a committed youth offender after the offender serves one year on supervision. Upon terminating supervision before the sentence expires, the Commission shall set aside the committed youth offender's conviction and issue a certificate setting aside the conviction instead of a certificate of termination.

(b) Two years after releasing a prisoner on supervision, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends early termination of the parolee's supervision.

(c) Five years after releasing a prisoner on supervision, the Commission shall terminate supervision over the parolee unless the Commission determines, after a hearing, that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. If the Commission does not terminate supervision under this paragraph, the parolee may request a hearing annually thereafter, and the Commission shall conduct an early termination hearing at least every two years.

(d) In calculating the two-year and five-year periods provided in paragraphs (b) and (c) of this section, the Commission shall not include any period of parole before the most recent release, or any period the parolee served in confinement on any other sentence.

(e)(1) In determining whether to grant early termination from supervision, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case-specific factors. Termination of supervision is indicated if the parolee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious parole violation; or

(B) has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious parole violation.

(2) As used in this paragraph, the term ''an incident of new criminal behavior or serious parole violation'' includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results. The Commission shall not terminate supervision of a parolee until it determines the disposition of a pending criminal charge.

(3) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the parolee, or to the parolee's background and criminal history.

■ 8. Section 2.96 is revised to read as follows:

**§ 2.96 Order of early termination.**

When the Commission orders early termination from supervision, the Commission shall issue a certificate to the parolee granting a full discharge from the sentence. The termination and discharge shall take effect only upon the actual delivery of the certificate of discharge to the parolee by the supervision officer, and may be rescinded for good cause at any time before such delivery.

■ 9. Section 2.97 is amended by revising the first clause of the first sentence to read as follows:

**§ 2.97 Withdrawal of order of release.**

If, after an order for release from active supervision under former § 2.95 has been issued by the Commission,

* * * * *

■ 10. Section 2.98 is amended in paragraph (e) by removing ''DC Code 24–406(a)'' and adding in its place ''DC Code 24–406(c).''

■ 11. Section 2.100 is amended in paragraph (d)(2) by removing ''DC Code 24–406(a)'' and adding in its place ''DC Code 24–406(c).''

■ 12. Section § 2.105 is amended by revising paragraphs (b), (d), and (e) to read as follows: 2.105 Revocation decisions.

(a) * * *

(b) If parole is revoked under this section, the Commission shall determine whether immediate reparole is warranted or whether the parolee should be returned to prison. If the parolee is returned to prison, the Commission shall also determine whether to set a presumptive release date pursuant to § 2.81.

(c) * * *

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3), the

Commission shall grant a revoked parolee credit toward completion of the sentence for all time served on parole.

(2)(A) The Commission shall forfeit credit for the period of parole if a parolee is convicted of a crime committed during a period of parole and that is punishable by a term of imprisonment of more than one year.

(B) If the crime is punishable by any other term of imprisonment, the Commission shall forfeit credit for the period of parole unless the Commission determines that such forfeiture is not necessary to protect the public welfare. In making this decision, the Commission shall consider the nature and circumstances of the violation behavior, the history and characteristics of the offender, including the offender's supervision history, and other available and relevant information.

(3) If, during the period of parole, a parolee intentionally refuses or fails to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent of the Commission, the Commission may order that the parolee not receive credit for the period of time that the Commission determines that the parolee failed or refused to respond to such a request, order, summons, or warrant.

(4) The provisions of this paragraph shall apply only to any period of parole that is being served on or after May 20, 2009, and shall not apply to any period of parole that was revoked before that date.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). DC Code 24–406(c) and paragraphs (a) through (d) of this section are fully applicable to prisoners serving sentences under the DC Youth Rehabilitation Act.

* * * * *

■ 13. Section § 2.208 is revised to read as follows:

**§ 2.208 Termination of a term of supervised release.**

(a)(1) The Commission may terminate a term of supervised release and discharge the releasee from supervision after the expiration of one year of supervised release, if the Commission is satisfied that such action is warranted by the conduct of the releasee and the interest of justice.

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the committed youth offender's conviction and issue a certificate setting aside the conviction instead of a certificate of discharge.

(b) Two years after a prisoner is released on supervision, and at least annually thereafter, the Commission shall review the status of the releasee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends termination of the supervised release term. If the term of supervised release imposed by the court is two years or less, the Commission shall consider termination of supervision only if recommended by the releasee's supervision officer.

(c) In calculating the two-year period provided in paragraph (b) of this section, the Commission shall not include any period of release before the most recent release, or any period served in confinement on any other sentence.

(d) (1) In deciding whether to terminate supervised release, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case specific factors. Termination of supervision is indicated if the releasee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious release violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious release violation.

(2) As used in this paragraph, the term ''an incident of new criminal behavior or serious release violation'' includes a new arrest or report of a release violation if supported by substantial evidence of guilt, even if no conviction or release revocation results. The Commission shall not terminate supervision of a releasee until it determines the disposition of a pending criminal charge.

(3) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the releasee, or to the releasee's background and criminal history.

Dated: June 8, 2009.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

[FR Doc. E9–14157 Filed 6–16–09; 8:45 am]

BILLING CODE 4410–31–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Part 49

**RIN 1219–AB66**

## Mine Rescue Teams

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. On February 10, 2009, the United States Court of Appeals for the District of Columbia Circuit (Court) held that MSHA's Mine Rescue Teams rule, issued on February 8, 2008, is inconsistent with Section 4 of the Mine Improvement and New Emergency Response (MINER) Act in three respects. This final rule revises those portions of the existing rule in accordance with the MINER Act, consistent with the Court's decision.

**DATES:** *Effective Date:* June 17, 2009.

*Compliance Dates:* Each underground coal mine operator affected by the changes in this final rule shall comply with the requirements of § 49.50(a), Table 49.50–A, by December 14, 2009, and the requirements of § 49.50(a), Table 49.50–B, by June 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### I. Final Rule

The Administrative Procedure Act (APA) requires that rulemakings be published in the **Federal Register** and requires generally that agencies provide an opportunity for public comment. However, notice and an opportunity for public comment are not required when the agency ''for good cause finds'' that notice and comment ''are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

The Court stated in its decision that the MINER Act does not allow MSHA to exercise any discretion with respect to the issues in the Court's order. As a result, MSHA finds that there is ''good cause'' under 5 U.S.C. 553(b)(B) of the APA to issue this final rule without prior public notice and comment. Further, in accordance with the Court's decision, MSHA has determined that there is ''good cause'' to except this action from the 30-day delayed effective

date requirement under 5 U.S.C. 553(d)(3) of the APA. The final rule is effective on June 17, 2009.

## II. Rulemaking Background

On February 8, 2008 (73 FR 7636), MSHA published a final rule that revised the Agency's existing requirements for mine rescue teams for underground coal mines. The final rule implemented Section 4 of the MINER Act and established new requirements to improve overall mine rescue capability, to improve mine emergency response time and mine rescue team effectiveness, and to increase the quantity and quality of mine rescue team training.

On April 4, 2008, the United Mine Workers of America (UMWA) challenged the final rule in the U.S. Court of Appeals for the District of Columbia Circuit (Court). On February 10, 2009, the Court issued its decision and held that MSHA's final rule is inconsistent with the MINER Act in three respects. *Int'l Union, United Mine Workers of Am.* v. *Dep't of Labor,* 554 F.3d 150 (D.C. Cir. 2009). The Court vacated the final rule insofar as it allows—

(1) Mine-site and state-sponsored teams to train at small mines annually rather than semi-annually;

(2) State employees who are members of State-sponsored teams to substitute certain job duties for participation in one of the two annually required mine rescue contests; and

(3) State employees who are members of State-sponsored teams to participate in mine rescue contests by serving as judges. (**Note:** The Agency's intent with respect to this item is included in the preamble to the 2008 final rule, and is not included in the regulatory text.)

The Court held that the two provisions of the rule, and MSHA's conclusion in the preamble with respect to team members serving as judges, contradict the plain language of the MINER Act.

## III. Analysis

This final rule revises the existing rule in accordance with the MINER Act, consistent with the Court's decision. MSHA has determined that 165 mine operators (156 small and 9 large mines) in the State of Kentucky will be impacted by the changes in this final rule.

The final rule revises § 49.11(b) by modifying the table at the end of this section to require that mine-site teams and State-sponsored teams must participate in mine rescue training at each mine covered by the mine rescue team at least annually at large mines and at least semi-annually at small mines. The final rule also modifies the note at the end of the table by deleting the language allowing members of State-sponsored teams to substitute their regular job experience for 50 percent of the statutorily required mine rescue contests and mine-site training.

For mine-site and State-sponsored mine rescue teams, the final rule revises § 49.20(b)(1) and (b)(4) to require mine-site training semi-annually, as opposed to at least annually under the existing rule, at small mines.

In addition, under this final rule, team members of State-sponsored teams who are full-time state employees whose primary duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge must participate in two mine rescue contests annually and train at the covered small mine at least semi-annually.

In the preamble to the February 8, 2008 final rule (73 FR 7643), MSHA stated its intent to consider State-sponsored teams, whose members are full-time State employees, as participating in a local mine rescue contest when performing duties as contest judges or officials. The Court found MSHA's conclusion that one can participate in a mine rescue contest by judging to be at odds with the statutory language. In this final rule, MSHA rescinds the Agency's intent, as stated in the preamble to the 2008 final rule. Under this final rule, all members of State-sponsored teams who are full-time State employees must participate in two local mine rescue contests, regardless of whether they also perform duties as a contest judge or official.

## IV. Implementation Schedule

MSHA anticipates that underground coal mine operators in Kentucky may experience practical difficulties in meeting the requirements in the final rule, if those requirements were effective upon publication. Based on Agency experience and data and information from Kentucky representatives, MSHA projects that it will take approximately 6 months for mines in Kentucky affected by this final rule to establish new teams, establish mine rescue stations, and conduct initial training. MSHA also projects that it will take one year for these mine rescue teams to complete all required training, including mine rescue contests. The final rule, therefore, includes a 6-month period for operators to establish new teams, establish mine rescue stations, and conduct initial training; and a one-year period for teams to complete all required training, including mine rescue contests.

## V. Regulatory Economic Analysis

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA prepared a Regulatory Economic Analysis (REA) for the 2008 final rule. The REA is located on MSHA's Web site at *http://www.msha.gov/regsinfo.htm*. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

Based on the analysis presented below, MSHA has determined that a complete revision of the REA is not necessary for this rulemaking. The profile of the underground coal industry, and the anticipated costs and benefits of the final rule generally remain unchanged. Although MSHA's feasibility determination is generally the same, the Agency has determined that this final rule may present some economic and practical considerations for underground coal mine operators in Kentucky. These considerations, discussed more fully below, will prevent underground coal mine operators in the state of Kentucky from relying on State-sponsored mine rescue teams and require them to establish additional composite and contract mine rescue teams.

MSHA has determined that 165 mine operators (156 small mines and 9 large mines) in the State of Kentucky will be impacted by the changes in this final rule. Kentucky is the only State that employs full-time State employees on their State-sponsored mine rescue teams. Kentucky currently has 12 State-sponsored mine rescue teams and operates six mine rescue stations. Each team member currently trains once per year in each covered mine and participates in one mine rescue contest each year. In order to meet the requirements of the MINER Act and this final rule, each rescue team member would have to participate in an additional mine rescue contest each year and train in each covered small mine an additional time each year.

Representatives from Kentucky and the State's mining association have indicated that they do not have the resources to have their State teams train in the 156 small underground coal mines an additional time each year. According to the representatives, the Kentucky mine rescue teams cannot train at each covered small mine twice

each year and perform the required mine inspections and other duties.

If the Kentucky State-sponsored mine rescue teams do not provide mine rescue coverage in accordance with the final rule, the Kentucky mine operators will have to find other means of coverage. The 156 small mines in Kentucky currently use the State-sponsored mine rescue teams for mine rescue coverage. Nine of the 74 large Kentucky mines currently have one mine rescue team and use the Kentucky State-sponsored mine rescue teams as the second team. Like the existing rule, this final rule requires that each mine have two certified mine rescue teams. MSHA estimates that these 165 mine operators will establish a combination of 28 composite and contract teams to meet the requirements of this final rule. In addition, MSHA estimates that the mine operators will establish four mine rescue stations.

Based on data presented in the 2008 REA, MSHA estimated an initial cost of $141,500 to establish each mine rescue station (*see* Table IV–3; all table numbers refer to the 2008 REA) and additional yearly costs of $17,000 per station for land use and equipment maintenance, supplies, inspection, testing, and corrective action (*see* Tables IV–3 and IV–4). In addition, MSHA estimates that it will cost $24,500 per team for annual training and contests (*see* Tables IV–6 through 11 and the related discussions). The estimated first-year cost of creating and equipping four mine rescue stations and 28 mine rescue teams is $1,320,000 [4 × ($141,500 + $17,000) + (28 × $24,500)]. Based on a 7 percent discount rate and the useful life estimates presented in the 2008 REA, the estimated yearly cost for these mines is $794,000.

In 2007, 68.8 million tons of coal were mined by the underground mines in Kentucky. At an average price of $43.80 for a ton of underground coal, this represented $3.0 billion in revenue. MSHA estimates that the annual revenue of the 156 small mines and 9 large mines impacted by the final rule is $728.2 million. The $794,000 yearly cost represents about 0.11 percent of the revenue of these Kentucky mines. MSHA concludes that the final rule is economically feasible for these mines.

MSHA anticipates that underground coal mine operators in Kentucky may experience practical difficulties in meeting the requirements in the final rule, if those requirements were effective upon publication. Based on Agency experience and data and information from Kentucky representatives, MSHA projects that it will take approximately 6 months for the mines in Kentucky affected by this final rule to establish new teams, establish mine rescue stations, and conduct initial training. MSHA also projects that it will take one year for these mine rescue teams to complete all required training, including mine rescue contests. The final rule, therefore, includes a 6-month period for operators to establish new teams, establish mine rescue stations, and conduct initial training; and a one-year period for teams to complete all required training, including mine rescue contests.

## VI. Paperwork Reduction Act of 1995

This final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. These changes in the Mine Rescue Teams regulation affect the paperwork collection burden hours and associated cost. MSHA estimates that this final rule will necessitate the formation of four additional mine rescue stations, requiring 48 additional breathing apparatus, and 28 additional mine rescue teams, requiring training for 168 additional mine rescue team members, resulting in an increase of 216 responses and 163 burden hours.

Under § 49.16, certification of inspection and testing of 48 additional breathing apparatus, as well as a record of any corrective action taken, would result in an increase of 129.6 paperwork burden hours and $4,103 annual burden cost. Under § 49.18, a record of training for 168 new mine rescue team members would result in an increase of 33.6 paperwork burden hours and $2,398 annual burden cost.

The Office of Management and Budget (OMB) has approved these requirements under OMB control number 1219–0144.

## List of Subjects in 30 CFR Part 49

Education and training, Mine safety and health, Reporting and recordkeeping requirements.

**Michael A. Davis,**

*Deputy Assistant Secretary for Operations, Mine Safety and Health.*

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA amends chapter I of title 30 of the Code of Federal Regulations as follows:

## PART 49—MINE RESCUE TEAMS

■ 1. The authority citation for part 49 continues to read as follows:

**Authority:** 30 U.S.C. 811, 825(e).

■ 2. In § 49.11(b), revise Table 49.11 to read as follows:

### § 49.11 Purpose and scope.

* * * * *

(b) * * *

TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS

| Requirement | Type of mine rescue team | | | |
|---|---|---|---|---|
| | Mine-site | Composite | Contract | State-sponsored |
| Team members must participate at least annually in two local mine rescue contests. | YES | YES | YES | YES. |
| Team members must participate in mine rescue training at each mine covered by the mine rescue team. A portion of the training must be conducted underground. | Annually at Large Mines; Semi-annually at Small Mines. | Semi-annually | Quarterly at Large Mines; Semi-annually at Small Mines. | Annually at Large Mines; Semi-annually at Small Mines. |
| Team must be available at the mine within 1 hour ground travel time from the mine rescue station. | YES | YES | YES | YES. |

TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS—Continued

| Requirement | Type of mine rescue team | | | |
|---|---|---|---|---|
| | Mine-site | Composite | Contract | State-sponsored |
| Team members must be knowledgeable about the operations and ventilation of each covered mine. | YES | YES | YES | YES. |
| Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine. | | YES | | |
| Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. | | | YES | |

All mine operators must provide for two certified mine rescue teams. Large mine operators shall provide one team that is either an individual mine-site mine rescue team or a composite team.

Team members of State-sponsored teams who are full-time State employees whose primary job duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge may substitute their regular job experience for 50 percent of the training requirements for non-State employee mine rescue team members, except these team members must participate in two local mine rescue contests and train at the covered mine in accordance with § 49.20(b).

■ 3. In § 49.20, revise paragraphs (b)(1) and (b)(4) to read as follows:

**§ 49.20 Requirements for all coal mines.**

* * * * *

(b) * * *

(1) *Mine-site team.* Members who work at the mine and participate in mine rescue training at the mine at least annually at large mines and at least semi-annually at small mines.

* * * * *

(4) *State-sponsored team.* Members who are state employees and participate in mine rescue training at each covered mine at least annually at large mines and at least semi-annually at small mines.

* * * * *

[FR Doc. E9–14128 Filed 6–16–09; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2008–1119]**

**RIN 1625–AA11**

## Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent regulated navigation area (RNA) in certain waters of the Chesapeake and Delaware (C & D) Canal, within the anchorage basin at Chesapeake City, Maryland, to be enforced annually, on the last Saturday in June, from 12:01 a.m. until 11:59 p.m. This RNA is necessary to provide for the safety of life, property and the environment. This RNA will restrict and control the movement of vessels throughout the anchorage basin during the Town of Chesapeake City's Canal Day event.

**DATES:** This rule is effective on June 17, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1119 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1119 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On March 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD'' in the **Federal Register** (74 FR 10695). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to ensure the boating public's safety during the Canal Day festivities taking place in June 2009. Congestion created by the influx of boats and visitors for Canal Day festivities would substantially raise the risk of accidental

drownings, personnel injuries, boat fires, boat capsizings and sinkings, and boating collisions, and the congestion would make response to such incidents much more difficult.

**Background and Purpose**

Each year, on the last Saturday in June, thousands of people attend the Town of Chesapeake City's Canal Day outdoor waterfront festival, located adjacent to the C & D Canal anchorage basin at Chesapeake City, Maryland. Due to the growing presence of visiting boaters in recent years, the waterways surrounding this annual event have become increasingly congested. This congestion substantially raises the risk of accidental drownings, personnel injuries, boat fires, boat capsizings and sinkings, and boating collisions, and the congestion makes response to such incidents much more difficult.

For example, on a typical weekend 10 to 15 boats anchor in the basin, which is approximately 420 yards in length and 170 yards in width. However, during Canal Day waterfront events, the number of boats anchoring in and around the basin far exceeds this number. In 2007, an estimated 400 boats and 10,000 visitors came to Chesapeake City, a town with a population of 800. An estimated 325 recreational boats were anchored or moored alongside other boats (rafted). These boats accounted for approximately 600 visitors. Persons on recreational vessels or other water craft began arriving on the Wednesday before the festival, and by that evening, large lines of rafted boats filled the anchorage basin, exceeding the safety limits two days before the event.

The Coast Guard has the authority under 33 Code of Federal Regulations part 165 to impose appropriate controls on activities that may pose a threat to persons, vessels and facilities under its jurisdiction. In June 2008, a Temporary Final Rule (33 CFR 165.T05–0315; 73 FR 35588) was implemented and proved to be a beneficial tool to ensure safety and to control vessel movement during this event. Therefore, the Coast Guard is now establishing a permanent RNA that will be enforced on the last Saturday in June, annually, in the C & D Canal, within the anchorage basin at Chesapeake City, Maryland. The rule will control vessel movement during this event, in order to promote maritime safety, and to protect the environment and maritime public from the potential hazards associated with a large gathering of recreational vessels and other watercraft in a confined area.

**Discussion of Comments and Changes**

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Though the RNA will be in effect for an entire day, commercial traffic in the C & D Canal anchorage basin is limited, and vessels transiting the C & D Canal may proceed safely around the RNA.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the C & D Canal anchorage basin at Chesapeake City, Maryland, from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Although this rule will be in effect for the entire day and applies to the entire anchorage basin, commercial vessel traffic in this area is limited and traffic would be allowed to pass within the RNA with the permission of the District Commander or his or her designated representative, vessels transiting the C & D Canal may proceed safely around the RNA, and the Coast Guard will issue maritime advisories widely available to users of the waterway before the effective period.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves certain regulations for vessels navigating the waters of the Chesapeake and Delaware Canal and fits within the category of paragraph 34(g) because it establishes a regulated navigation area.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.556 to read as follows:

### § 165.556 Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD.

(a) Location. The following area is a regulated navigation area: All waters of the Chesapeake and Delaware (C & D) Canal within the anchorage basin at Chesapeake City, Maryland, bounded by a line drawn across the entrance to the basin from position latitude 39°31′39.6″ N, longitude 075°48′36.5″ W, to position latitude 39°31′40.6″ N, longitude 075°48′43.3″ W. All coordinates refer to NAD 1983.

(b) Definitions. For the purposes of this section:

*District Commander* means the Commander, Fifth Coast Guard District or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Fifth Coast Guard District, to act on his or her behalf, or his or her designated representative.

(c) Regulations. The general regulations governing regulated navigation areas, found in 33 CFR 165.13, apply to the regulated navigation area described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering and accessing this regulated navigation area, except as authorized by the District Commander or his or her designated representative.

(2) Persons or vessels requiring entry into or passage within the regulated navigation area must request authorization from the District Commander or his or her designated representative, by telephone at (410) 576–2693 or by marine band radio on VHF–FM Channel 16 (156.8 MHz), from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually. All Coast Guard vessels enforcing this regulated navigation area can be contacted on marine band radio VHF–FM Channel 16 (156.8 MHz).

(3) The operator of any vessel entering or located within this regulated navigation area shall:

(i) Travel at no-wake speed,

(ii) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(iii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(4) All vessels and persons within this regulated navigation area must comply with any additional instructions of the District Commander or the designated representative.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated navigation area by any Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually.

Dated: May 26, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. E9–14252 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0345]**

**RIN 1625–AA00**

## Safety Zone; San Diego Symphony Orchestra; San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, upon the navigable waters of the San Diego Bay in support of the San Diego Symphony Orchestra. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8:30 p.m. on July 3, 2009 through 10 p.m. on September 6, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0345 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0345 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail, Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

### Background and Purpose

The San Diego Symphony Orchestra and Copley Symphony Hall is sponsoring the San Diego Symphony Orchestra, which will include a fireworks presentation conducted from a barge in San Diego Bay. The barge will be located near the navigational channel in the vicinity of North Embarcadero. The safety zone will be an 800-foot radius around the firing barge. The sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone. This safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway.

### Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:30 p.m. to 10 p.m. on July 3, July 5, July 10–11, July 17–18, July 24–25, July 31, August 1, August 7–8, August 14–15, August 21–22, August 28–29, and September 4–6, 2009. The limits of the safety zone will be an 800-foot radius around the anchored firing barge in approximate position 32°42′12″ N, 117°10′01″ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative.

### Regulatory Analyses

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

### Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

### Small Entities

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

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

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

alerts via marine channel 16 VHF before the safety zone is enforced.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary zone § 165.T11–198 to read as follows:

### § 165.T11–198 Safety zone; San Diego Symphony Orchestra; San Diego, California

(a) *Location.* The limits of the safety zone will be an 800 foot radius around the anchored firing barge in approximate position 32°42′13″ N, 117°10′01″ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 10 p.m. on July 3, July 5, July 10–11, July 17–18, July 24–25, July 31, August 1, August 7–8, August 14–15, August 21–22, August 28–29, and September 4–6, 2009.

(c) *Definitions.* The following definition applies to this section: Designated representative, means any

commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

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

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

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

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

Dated: June 2, 2009.

**T.H. Farris,**

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

[FR Doc. E9–14163 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0310]**

**RIN 1625–AA00**

## Safety Zone; Ohio River, Mile 460.0 to 470.5, Cincinnati, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, beginning at mile marker 460.0 and ending at 470.5. This zone is necessary to protect participants, spectators, and vessels from the potential safety hazards associated with the 8th Annual Ohio River Way Paddlefest marine event. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

**DATES:** This rule is effective from 8 a.m. to 12:30 p.m. on June 27, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0310 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0310 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Saturday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Chief Petty Officer Don Laisure, Prevention Department, Sector Ohio Valley, U.S. Coast Guard; telephone 502–893–8186, e-mail *Donald.L.Laisure@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so and delaying its effective date would be contrary to public interest since immediate action is needed to protect persons and vessels from the hazards associated with the 8th Annual Ohio River Way Paddlefest marine event.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

### Background and Purpose

The 8th Annual Ohio River Way Paddlefest Marine Event consists of kayak and canoe races on June 27, 2009. A safety zone encompassing the entire marine event area is required to ensure the safety of participants, spectators and vessels in the area.

### Discussion of Rule

The Coast Guard is establishing a safety zone from 8 a.m. to 12:30 p.m. on Saturday, June 27, 2009 for the 8th Annual Ohio River Way Paddlefest marine event. This temporary safety zone is necessary for the safety of the participants, spectators and vessels, and will impact the use of the waterway during the period of the event. The limits of this temporary safety zone encompass all waters of the Ohio River between Ohio River Mile 460.0 and 470.5.

The Coast Guard will enforce the safety zone and may be assisted by other Federal, State and local agencies, including the Coast Guard Auxiliary. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or other designated representative.

### Regulatory Analyses

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

### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, location, and duration of the safety zone.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit

or anchor between Ohio River Mile 460.0 and 470.5 from 8 a.m. to 12:30 p.m. on June 27, 2009.

This safety zone would not have a significant impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only 4 hours and 30 minutes. Before activation of the zone, we would issue maritime advisories widely available to users of the river. Consideration will be given to vessels desiring transit through the safety zone on a case-by-case basis. When safety permits, vessel transits will be granted by and under the conditions set forth by the COTP or designated representative. Before activation of the zone, we will issue maritime advisories widely available to users of the river.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 165 that apply to safety zones on the navigable waters of the United States. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T08–0310 to read as follows:

**165.T08–0310 Safety Zone; Ohio River, Miles 460.0 to 470.5, Cincinnati, OH.**

(a) *Location.* The following area is a safety zone: All waters of the Ohio River, from surface to bottom, beginning at mile marker 460.0 and ending at mile marker 470.5.

(b) *Effective Period.* This section is effective from 8 a.m. to 12:30 p.m. on June 27, 2009.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and Petty Officers of the U.S. Coast Guard.

Dated: May 5, 2009.

**A.E. Tucci,**

*Commander, U.S. Coast Guard, Captain of the Port Ohio Valley, Acting.*

[FR Doc. E9–14166 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R05–OAR–2008–0031; FRL–8919–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the EPA is withdrawing the May 5, 2009 (74 FR 20599), direct final rule approving a rule revision to extend Federally Enforceable State Operating Permit renewal terms from five years to ten years. The State of Indiana submitted this revision as a modification to the State Implementation Plan on December 19, 2007. In the direct final rule, EPA stated that if adverse comments were submitted by June 4, 2009, the rule would be withdrawn and not take effect. On May 19, 2009, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on May 5, 2009 (74 FR 20665). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 74 FR 20599 on May 5, 2009, is withdrawn as of June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *portanova.sam@epa.gov.*

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 4, 2009.

**Walter W. Kovalick Jr.,**

*Acting Regional Administrator, Region 5.*

### PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.770 published in the **Federal Register** on May 5, 2009 (74 FR 20599) on page 20601 is withdrawn as of June 17, 2009.

[FR Doc. E9–14240 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0738; FRL–8418–6]**

### Alkyl Amine Polyalkoxylates; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of alkyl amine polyalkoxylates when used as inert ingredients in pesticide formulations applied to growing crops and animals. The Joint Inerts Task Force (JITF), Cluster Support Team Number 4 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of alkyl amine polyalkoxylates.

**DATES:** This regulation is effective June 17, 2009. Objections and requests for hearings must be received on or before August 17, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0738. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: leifer.kerry@*epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0738 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 17, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0738, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background

In the **Federal Register** of December 3, 2008 (73 FR 73644) (FRL–8386–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7382) by The Joint Inerts Task Force (JITF), Cluster Support Team Number 4 (CST 4), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, The petition requested that 40 CFR 180.920 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of the inert ingredient *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl) content is 2–60 moles and *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) content is 2-60 moles (these substances are referred to throughout this document as alkyl amine polyalkoxylates). That notice referenced a summary of the petition prepared by JITF, CST 4, the petitioner, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) in which the Agency revoked, under section 408(e)(1) of FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 (73 FR 45312 ) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

## III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other

exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement of a tolerance for residues of alkyl amine polyalkoxylates when used as inert ingredients in pesticide formulations applied to growing crops or food-producing animals. EPA's assessment of exposures and risks associated with establishing tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Alkyl amine polyalkoxylates are not acutely toxic by the oral and dermal routes of exposure, or via inhalation under normal use conditions. Concentrated materials are generally corrosive, eye and skin irritants and may be dermal sensitizers. There is no evidence that alkyl amine polyalkoxylates are neurotoxic, mutagenic, or clastogenic.

Following subchronic exposure to rats, some gastrointestinal irritation was observed, but no specific target organ toxicity or neurotoxicity was seen. In subchronic studies in rats and/or dogs, the most sensitive effects noted were increased mortality, clinical signs (salivation, wheezing, emesis, and/or soft feces), cataracts, cellular changes in the stomach, and liver effects characterized by enzyme induction, and pigment accumulation in Kupffer cells and bile canaliculi. There was no increased susceptibility to the offspring of rats following *in utero* exposure in two prenatal developmental toxicity studies. However, there is evidence of increased susceptibility in a reproductive screening study in rats.

Specific information on the studies received and the nature of the adverse effects caused by alkyl amine polyalkoxylates as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Alkyl Amine Polyalkoxylates (JITF CST 4 Inert Ingredients), Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, at pp 10-17 in docket ID number EPA–HQ–OPP–2008–0738.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for alkyl amine polyalkoxylates used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ALKYL AMINE POLYALKOXYLATES FOR USE IN HUMAN RISK ASSESSMENT

| Exposure/Scenario | Point of Departure and Uncertainty/Safety Factors | RfD, PAD, LOC for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute dietary (all populations) | NOAEL = 72 milligrams/kilograms/day (mg/kg/day)<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.72 mg/kg/day<br>aPAD = 0.72 mg/kg/day | 90-Day Oral Toxicity Study in Rats LOAEL = 216 mg/kg/day based on mortality (2 deaths after 2 exposures; gestation day (GD) 2), with a total of 6/25 deaths during GD 6-15. |
| Chronic dietary (all populations) | NOAEL 15 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.15 mg/kg/day<br>cPAD = 0.15 mg/kg/day | 90-Day Oral (Gavage) Toxicity Study in Rats LOAEL = 30 mg/kg/day based on increased mortality (2 deaths (days 36, 78)), salivation, and posterior subcapsular cataracts in males as well as wheezing, and macro- and microscopic changes in the nonglandular stomach of both sexes. |

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ALKYL AMINE POLYALKOXYLATES FOR USE IN HUMAN RISK ASSESSMENT—Continued

| Exposure/Scenario | Point of Departure and Uncertainty/Safety Factors | RfD, PAD, LOC for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months) | NOAEL= 15 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | LOC for MOE = 100 | 90–Day Oral (Gavage) Toxicity Study in Rats LOAEL = 30 mg/kg/day based on increased mortality (2 deaths (days 36, 78)), salivation, and posterior subcapsular cataracts in males as well as wheezing, and macro- and microscopic changes in the nonglandular stomach of both sexes. |
| Dermal and Inhalation (all durations) | Oral study NOAEL = 15 mg/kg/day (dermal absorption rate = 5% (inhalation absorption rate = 100%)<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | LOC for MOE = 100 | 90–Day Oral (Gavage) Toxicity Study in Rats LOAEL = 30 mg/kg/day based on increased mortality (2 deaths (days 36, 78)), salivation, and posterior subcapsular cataracts in males as well as wheezing, and macro- and microscopic changes in the nonglandular stomach of both sexes. |
| Cancer (oral, dermal, inhalation) | Classification: No animal toxicity data available for an assessment; Based on SAR analysis, alkyl amine polyalkoxylates are not expected to be carcinogenic. | | |

$UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies). RfD = reference dose.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to alkyl amine polyalkoxylates, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from alkyl amine polyalkoxylates in food as follows:

i. *Acute and chronic exposure.* In conducting the acute and chronic dietary exposure assessments, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for the alkyl amine polyalkoxylates. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredients. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the dietary exposure and risk assessment can be found at *http://www.regulations.gov* in *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts* in docket ID number EPA–HQ–OPP–2008–0738.

In the assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather, there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product relative to that of the active ingredient. In the case of alkyl amine polyalkoxylates, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of alkyl amine polyalkoxylates that may be in formulations (no more than 25 percent in herbicides and no more than 10 percent in fungicides and insecticides) and assumed the alkyl amine polyalkoxylates to be present at the maximum limitations rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below these percentages. For example, EPA examined several of the pesticide products associated with the tolerance/commodity combination which are the driver of the risk assessment and found that these products did not contain surfactants at levels greater than 2.25 percent and that none of the surfactants were alkyl amine polyalkoxylates.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity.

Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In sum, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration

was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

ii. *Cancer*. The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts for potential carcinogenicity of both a representative alkyl amine polyalkoxylate, as well as a possible metabolite/degradate of alkyl amine polyalkoxylate that had been extensively dealkylated, with the amine group intact. No structural alerts for carcinogenicity were identified in either case. Alkyl amine polyalkoxylates are not expected to be carcinogenic. Therefore a cancer dietary exposure assessment is not necessary to assess cancer risk.

iii. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for alkyl amine polyalkoxylates. Tolerance level residues and/or 100 percent CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for alkyl amine polyalkoxylates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of alkyl amine polyalkoxylates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of alkyl amine polyalkoxylates. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of the alkyl amine polyalkoxylates were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at *http://www.regulations.gov* in document *Alkyl Amine Polyalkoxylates (JITF CST 4 Inert Ingredients), Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,* at pp 18 and 70–72 in docket ID number EPA–HQ–OPP–2008–0738.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for alkyl amine polyalkoxylates, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for both the acute and chronic dietary risk assessments. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Alkyl amine polyalkoxylates are not used as inert ingredients in pesticide products that are registered for specific uses that could result in indoor residential exposures but may have uses as inert ingredients in pesticide products that may result in outdoor residential exposures.

A screening level residential exposure and risk assessment was completed for products containing alkyl amine polyalkoxylates as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for outdoor scenarios with high exposure potential (i.e., exposure scenarios with high end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing alkyl amine polyalkoxylates. Similarly, residential postapplication dermal and oral exposure assessments were also performed utilizing high end outdoor exposure scenarios. Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in document *Alkyl Amine Polyalkoxylates (JITF CST 4 Inert Ingredients), Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, at pp 22–26 and 74–80 in docket ID number EPA–HQ–OPP–2008–0738.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found alkyl amine polyalkoxylates to share a common mechanism of toxicity with any other substances, and alkyl amine polyalkoxylates do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that alkyl amine polyalkoxylates do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

### *D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The toxicity database consists of a rat developmental toxicity study on an alkyl amine polyalkoxylate and a rat reproduction study on two different alkyl amine polyalkoxylates which covers the range of carbon chain lengths and polyalkoxylation within the group. No quantitative or qualitative increased susceptibility was demonstrated in the fetuses in the prenatal developmental toxicity study in rats following *in utero* exposure. There was some evidence of increased susceptibility in the rat reproductive toxicity study (where the offspring NOAEL of 300 ppm (12–14

mg/kg/day) was lower than the parental NOAEL of 1,000 ppm (41–48.6 mg/kg/day). There are no neurotoxicity studies available for the alkyl amine polyalkoxylates; however, there is no indication of neurotoxicity in the available toxicity studies.

Based on the evidence of increased susceptibility in the offspring relative to the parents in the rat reproduction study a Degree of Concern analysis was performed. The purpose of the Degree of Concern analysis was (1) to determine the level of concern for the effects observed when considered in the context of all available toxicity data; and (2) identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment.

There was no increased susceptibility to the offspring of rats following *in utero* exposure to alkyl amine polyalkoxylates in the prenatal development toxicity study. However, there was evidence of increased susceptibility in the reproduction toxicity studies in rats. Offspring effects include litter loss, increased mean number of unaccounted–for implantation sites and decreased mean number of pups born, live litter size and postnatal survival from birth to LD 4 (F1) at 1,000 ppm for one alkyl amine polyalkoxylate homologue (41–48.6 mg/kg/day) and at 2,000 ppm (134–148 mg/kg/day) for a second homologue. However, the rat reproduction study identified a NOAEL of 300 ppm for both homologues (12–14 mg/kg/day and 23–26 mg/kg/day, respectively) for offspring effects, and the selected point of departure for the dietary, dermal and inhalation risk assessments is protective of these offspring effects, thus there are no residual concerns.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for alkyl amine polyalkoxylates is considered adequate for assessing the risks to infants and children (the available studies are described in Unit IV.4.D.2. above).

ii. There is no indication that alkyl amine polyalkoxylates are neurotoxic chemicals and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that alkyl amine polyalkoxylates result in increased susceptibility in *in utero* rats in prenatal developmental studies. Increased susceptibility of young rats in the 2–generation reproduction study was seen, however the selected point of departure for the dietary, dermal and inhalation risk assessments is protective of these offspring effects, thus there are no residual concerns.

iv. No chronic studies on alkyl amine polyalkoxylates are available, however, there is no need to add additional UFs to account for an incomplete toxicity database because the adverse effects observed in the available toxicity studies do not seem to increase in severity over time (4 weeks to 13 weeks). Based on the lack of progression of severity of effects with time along with the considerable similarities of effects across the species tested and the observation that the vast majority of the effects observed are related to local irritation and corrosive effects, EPA concludes that an additional UF for extrapolation from subchronic toxicity study to a chronic exposure scenario is not needed.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100 percent crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to alkyl amine polyalkoxylates in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by alkyl amine polyalkoxylates.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short–, intermediate–, and chronic–term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

In conducting this aggregate risk assessment, the Agency has incorporated the petitioner's requested use limitations of alkyl amine polyalkoxylates as inert ingredients in pesticide product formulations into its exposure assessment. Specifically the petition includes a use limitation of alkyl amine polyalkoxylates at not more than 10 percent by weight in fungicide and insecticide formulations and at no more than 25 percent in herbicide formulations.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, and the use limitations of not more than 10 percent by weight in fungicide and insecticide formulations and at no more than 25 percent in herbicide formulations, the acute dietary exposure from food and water to alkyl amine polyalkoxylates at the 95th percentile for food and drinking water is 16 percent of the aPAD for the U.S. population and 44 percent of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water Using the exposure assumptions discussed in this unit for chronic exposure, and the use limitations of not more than 10 percent by weight in fungicide and insecticide formulations and at no more than 25 percent in herbicide formulations, the chronic dietary exposure from food and water to alkyl amine polyalkoxylates is 27 percent of the cPAD for the U.S. population and 85 percent of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

3. *Short–term risk*. Short–term aggregate exposure takes into account short–term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Alkyl amine polyalkoxylates are used as inert ingredients in pesticide products that are currently registered for uses that could result in short–term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short–term residential exposures to alkyl amine polyalkoxylates.

Using the exposure assumptions described in this unit for short–term

exposures, EPA has concluded the combined short–term food, water, and residential exposures aggregated result in aggregate MOEs of 156 and 172, for adult males and females respectively, for a combined high end dermal and inhalation handler exposure with a high end post application dermal exposure and an aggregate MOE of 90 for children for a combined turf dermal exposure with hand-to-mouth exposure. While the MOE for short-term aggregate exposure for children is slightly below 100, EPA does not consider this MOE to represent a risk of concern for the following reasons.

• The hazard assessment for the alkyl amine polyalkoxylates is conservative. The PODs used to calculate aggregate risks for alkyl amine polyalkoxylates were based on the most toxic surrogate chemical. The alkyl amine polyalkoxylates are actually a mixture of compounds, so it is likely that the POD is a conservative assessment of toxicity.

• The Agency traditionally considers a level of concern (LOC) for these risk assessments to be for an MOE of 100 based on the standard 10x inter- and 10x intraspecies extrapolation safety factors. However, for alkyl amine polyalkoxylates, the primary toxic effect seen is related to the surfactants' inherent function to disrupt cell membranes resulting in irritating properties to tissues. Given that a significant difference between species for this type of effect is not expected, an LOC lower than an MOE of 100 may be appropriate for the non-dietary risk assessments.

• The dietary (food and water) portion of the aggregate risk assessment is a driver in this aggregate assessment and is considered to be highly conservative.

• The highest tolerance level from the surrogate pesticides for every food is used adjusted by the limitation in formulation for alkyl amine polyalkoxylates specified in the exemption. Estimating alkyl amine polyalkoxylates exposure based on the assumption that alkyl amine polyalkoxylates will be present at the maximum permitted amount in the pesticide products producing the highest possible residue in food is very conservative. EPA examined several of the pesticide products associated with the tolerance/commodity combination which are the driver of the risk assessment and found that these products contained between 1 and 2.25 percent surfactant, none of which was alkyl amine polyalkoxylates.

•100 percent crop treated is assumed for all crops (every food eaten by a person each day has tolerance-level residues).

•Many of these high tolerances are based on very short pre-harvest intervals where there is little time for degradation.

•No consideration was given to potential degradation between harvest and consumption (use of tolerance level residues which are typically one to two orders of magnitude higher than actual residues found in monitoring data).

•No consideration was given to potential reduction in residues from washing or cooking.

• The residential portion of the assessment is based on high-end application rates and assumes a dermal absorption of 5 percent which is a conservative, health protective value.

• Finally, the aggregate assessment assumes that a child would receive a high-end dietary exposure with high-end dermal and hand-to-mouth exposures concurrently.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Alkyl amine polyalkoxylates are used as inert ingredients in pesticide products that are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to alkyl amine polyalkoxylates.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 156 and 172, for adult males and females respectively, for a combined high end dermal and inhalation handler exposure with a high end post application dermal exposure and an MOE of 102 for children for a combined high end dermal exposure with hand-to-mouth exposure.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of alkyl amine polyalkoxylates.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### *B. International Residue Limits*

The Agency is not aware of any country requiring a tolerance for alkyl amine polyalkoxylates nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

## V. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of alkyl amine polyalkoxylates when used as an inert ingredient in pesticide formulations applied to growing crops or to animals.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national

government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, the table is amended by adding alphabetically the new inert ingredients to read as follows:

**§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.**

* * * * *

| Inert Ingredients | Limits | Uses |
|---|---|---|
| * * * | * * * * | |
| *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl) content is 2–60 moles (CAS Reg. Nos. 10213–78–2, 25307–17–9, 26635–92–7, 26635–93–8, 288259–52–9, 58253–49–9, 61790–82–7, 61791–14–8, 61791–24–0, 61791–26–2, 61791–31–9, 61791–44–4, 68155–33–9, 68155–39–5, 68155–40–8,70955–14–5, 73246–96–5) | Not to exceed 25% in herbicide formulations and 10% in insecticide and fungicide formulations | Surfactants, related adjuvants of surfactants |
| * * * | * * * * | |
| *N,N*–Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) content is 2–60 moles (CAS Reg. Nos. 68213–26–3, 68153–97–9, 75601–76–2) | Not to exceed 25% in herbicide formulations and 10% in insecticide and fungicide formulations | Surfactants, related adjuvants of surfactants |
| * * * | * * * * | |

■ 3. In § 180.930, the table is amended by adding alphabetically new entries of inert ingredients to read as follows:

**§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.**

* * * * *

| Inert Ingredients | Limits | Uses |
|---|---|---|
| * * * | * * * * | |
| *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl) content is 2–60 moles (CAS Reg. Nos. 10213–78–2, 25307–17–9, 26635–92–7, 26635–93–8, 288259–52–9, 58253–49–9, 61790–82–7, 61791–14–8, 61791–24–0, 61791–26–2, 61791–31–9, 61791–44–4, 68155–33–9, 68155–39–5, 68155–40–8,70955–14–5, 73246–96–5) | Not to exceed 25% in herbicide formulations and 10% in insecticide and fungicide formulations | Surfactants, related adjuvants of surfactants |
| * * * | * * * * | |
| *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) $C_8$-$C_{18}$ saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl/oxy(methyl-1,2-ethanediyl) content is 2–60 moles (CAS Reg. Nos. 68213–26–3, 68153–97–9, 75601–76–2) | Not to exceed 25% in herbicide formulations and 10% in insecticide and fungicide formulations | Surfactants, related adjuvants of surfactants |
| * * * | * * * * | |

[FR Doc. E9–14113 Filed 6–16–09; 8:45 am]
**BILLING CODE 6560–50–S**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8079]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.6 [Amended]**

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region II** | | | | |
| New Jersey: | | | | |
| Clementon, Borough of, Camden County. | 340130 | January 30, 1975, Emerg; October 21, 1983, Reg; June 16, 2009, Susp. | June 16, 2009 .. | June 16, 2009 |
| Gloucester, Township of, Camden County. | 340133 | July 24, 1975, Emerg; December 1, 1982, Reg; June 16, 2009, Susp. | .....do* ..... | Do. |
| Laurel Springs, Borough of, Camden County. | 340547 | March 23, 1976, Emerg; May 13, 1977, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Lindenwold, Borough of, Camden County. | 340137 | January 12, 1976, Emerg; September 17, 1980, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Pine Hill, Borough of, Camden County | 340143 | March 11, 1975, Emerg; February 24, 1978, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Stratford, Borough of, Camden County | 340146 | March 21, 1975, Emerg; September 17, 1980, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Blain, Borough of, Perry County ..... | 420748 | October 14, 1975, Emerg; June 24, 1977, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Bloomfield, Borough of, Perry County ... | 420748 | February 22, 1974, Emerg; March 1, 1978, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Buffalo, Township of, Perry County ..... | 421948 | March 27, 1975, Emerg; August 15, 1980, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Carroll, Township of, Perry County ..... | 421949 | February 18, 1976, Emerg; Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Centre, Township of, Perry County ..... | 422498 | August 12, 1975, Emerg; June 1, 1981, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Duncannon, Borough of, Perry County | 420749 | January 20, 1975, Emerg; December 18, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Greenwood, Township of, Perry County | 421950 | August 12, 1975, Emerg; May 19, 1981, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Howe, Township of, Perry County ..... | 421145 | April 4, 1974, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Jackson, Township of, Perry County .... | 421952 | January 28, 1976, Emerg; October 15, 1985, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Juniata, Township of, Perry County ..... | 421140 | March 16, 1974, Emerg; May 1, 1978, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Liverpool, Borough of, Perry County ..... | 420750 | March 20, 1974, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Liverpool, Township of, Perry County ... | 421953 | February 5, 1975, Emerg; June 18, 1980, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Marysville, Borough of, Perry County ... | 420751 | February 9, 1973, Emerg; May 16, 1977, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Miller, Township of, Perry County ..... | 421954 | March 21, 1977, Emerg; April 15, 1981, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Millerstown, Borough of, Perry County | 420752 | November 17, 1975, Emerg; May 19, 1981, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| New Buffalo, Borough of, Perry County | 420753 | February 5, 1975, Emerg; April 2, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Newport, Borough of, Perry County ..... | 420754 | March 2, 1973, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Northeast Madison, Township of, Perry County. | 421955 | September 12, 1975, Emerg; September 4, 1985, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Oliver, Township of, Perry County ..... | 421022 | November 12, 1973, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Penn, Township of, Perry County ..... | 420755 | July 5, 1973, Emerg; February 18, 1981, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Rye, Township of, Perry County ..... | 421028 | October 5, 1973, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Saville, Township of, Perry County ..... | 421956 | July 23, 1975, Emerg; March 4, 1988, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Southwest Madison, Township of, Perry County. | 421957 | July 2, 1975, Emerg; August 19, 1985, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Spring, Township of, Perry County ..... | 421958 | September 10, 1975, Emerg; November 12, 1982, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Toboyne, Township of, Perry County .... | 421959 | September 8, 1981, Emerg; September 4, 1985, Reg; June 16, 2009, Susp. | .....do ..... | Do. |
| Tuscarora, Township of, Perry County | 421960 | April 14, 1976, Emerg; November 19, 1982, Reg; June 16, 2009, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Tyrone, Township of, Perry County | 421961 | February 22, 1977, Emerg; March 4, 1988, Reg; June 16, 2009, Susp. | .....do | Do. |
| Watts, Township of, Perry County | 420756 | May 24, 1973, Emerg; August 15, 1979, Reg; June 16, 2009, Susp. | .....do | Do. |
| Wheatfield, Township of, Perry County | 421035 | October 29, 1971, Emerg; December 18, 1979, Reg; June 16, 2009, Susp. | .....do | Do. |
| Virginia: | | | | |
| Cumberland County, Unincorporated Areas. | 510043 | March 12, 1974, Emerg; February 15, 1979, Reg; June 16, 2009, Susp. | .....do | Do. |
| King and Queen County, Unincorporated Areas. | 510082 | June 20, 1974, Emerg; September 5, 1990, Reg; June 16, 2009, Susp. | .....do | Do. |
| York County, Unincorporated Areas | 510182 | October 5, 1973, Emerg; December 16, 1988, Reg; June 16, 2009, Susp. | .....do | Do. |
| **Region IV** | | | | |
| Alabama: | | | | |
| Millbrook, City of, Autauga County | 010370 | October 18, 1979, Emerg; August 15, 1984, Reg; June 16, 2009, Susp. | .....do | Do. |
| Prattville, City of, Autauga County | 010002 | June 18, 1974, Emerg; August 15, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Kentucky: Crittenden County, Unincorporated Areas. | 210254 | October 7, 1997, Emerg; April 1, 1999, Reg; June 16, 2009, Susp. | .....do | Do. |
| Mississippi: | | | | |
| Biloxi, City of, Harrison County | 285252 | June 30, 1970, Emerg; September 11, 1970, Reg; June 16, 2009, Susp. | .....do | Do. |
| D'iberville, City of, Harrison County | 280336 | November 14, 1988, Emerg; November 14, 1988, Reg; June 16, 2009, Susp. | .....do | Do. |
| Gulfport, City of, Harrison County | 285253 | May 29, 1970, Emerg; September 11, 1970, Reg; June 16, 2009, Susp. | .....do | Do. |
| Harrison County, Unincorporated Areas | 285255 | July 17, 1970, Emerg; June 15, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Long Beach, City of, Harrison County | 285257 | June 19, 1970, Emerg; September 11, 1970, Reg; June 16, 2009, Susp. | .....do | Do. |
| Pass Christian, City of, Harrison County | 285261 | May 26, 1970, Emerg; May 26, 1970, Reg; June 16, 2009, Susp. | .....do | Do. |
| North Carolina: | | | | |
| China Grove, Town of, Rowan County | 370210 | December 21, 1978, Emerg; December 21, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| East Spencer, Town of, Rowan County | 370211 | March 31, 1975, Emerg; July 3, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Faith, Town of, Rowan County | 370352 | NA, Emerg; November 26, 2002, Reg; June 16, 2009, Susp. | .....do | Do. |
| Granite Quarry, Town of, Rowan County. | 370212 | May 1, 1975, Emerg; September 15, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Landis, Town of, Rowan County | 370213 | March 31, 1975, Emerg; July 3, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Rockwell, Town of, Rowan County | 370214 | May 13, 1975, Emerg; May 15, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Rowan County, Unincorporated Areas | 370351 | August 23, 1976, Emerg; November 1, 1979, Reg; June 16, 2009, Susp. | .....do | Do. |
| Salisbury, City of, Rowan County | 370215 | July 23, 1974, Emerg; May 15, 1980, Reg; June 16, 2009, Susp. | .....do | Do. |
| Spencer, Town of, Rowan County | 370216 | April 7, 1975, Emerg; September 29, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Tennessee: Mountain City, City of, Johnson County. | 470275 | May 8, 1975, Emerg; August 5, 1986, Reg; June 16, 2009, Susp. | .....do | Do. |
| **Region V** | | | | |
| Ohio: | | | | |
| Aquilla, Village of, Geauga County | 390739 | May 3, 1976, Emerg; December 7, 1984, Reg; June 16, 2009, Susp. | .....do | Do. |
| Chardon, City of, Geauga County | 390191 | June 25, 1975, Emerg; January 4, 1985, Reg; June 16, 2009, Susp. | .....do | Do. |
| Geauga County, Unincorporated Areas | 390190 | February 18, 1977, Emerg; November 4, 1988, Reg; June 16, 2009, Susp. | .....do | Do. |
| Middlefield, Village of, Geauga County | 390192 | March 10, 1975, Emerg; September 30, 1988, Reg; June 16, 2009, Susp. | .....do | Do. |
| South Russell, Village of, Geauga County. | 390740 | July 2, 1976, Emerg; —, Reg; June 16, 2009, Susp. | .....do | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region VI** | | | | |
| Arkansas: | | | | |
| Marmaduke, City of, Greene County | 050346 | April 7, 1976, Emerg; June 1, 1987, Reg; June 16, 2009, Susp. | .....do | Do. |
| Paragould, City of, Greene County | 050085 | June 27, 1973, Emerg; June 15, 1978, Reg; June 16, 2009, Susp. | .....do | Do. |
| Sedgwick, City of, Greene County | 050576 | February 1, 1988, Emerg; —, Reg; June 16, 2009, Susp. | .....do | Do. |
| **Region IX** | | | | |
| California: | | | | |
| Antioch, City of, Contra Costa County | 060026 | May 1, 1975, Emerg; December 2, 1980, Reg; June 16, 2009, Susp. | .....do | Do. |
| Corcoran, City of, Kings County | 060663 | NA , Emerg; November 28, 1997, Reg; June 16, 2009, Susp. | .....do | Do. |
| Dinuba, City of, Tulare County | 060403 | June 26, 1975, Emerg; November 3, 1982, Reg; June 16, 2009, Susp. | .....do | Do. |
| El Cerrito, City of, Contra Costa County | 065027 | March 5, 1971, Emerg; June 1, 1977, Reg; June 16, 2009, Susp. | .....do | Do. |
| Hercules, City of, Contra Costa County | 060434 | July 25, 1975, Emerg; September 30, 1982, Reg; June 16, 2009, Susp. | .....do | Do. |
| Pleasant Hill, City of, Contra Costa County. | 060034 | March 19, 1971, Emerg; September 30, 1983, Reg; June 16, 2009, Susp. | .....do | Do. |
| **Region X** | | | | |
| Idaho: | | | | |
| Cambridge, City of, Washington County | 160199 | August 27, 1976, Emerg; February 19, 1987, Reg; June 16, 2009, Susp. | .....do | Do. |
| Midvale, City of, Washington County | 160123 | May 7, 1975, Emerg; February 19, 1987, Reg; June 16, 2009, Susp. | .....do | Do. |
| Washington County, Unincorporated Areas. | 160221 | February 2, 1976, Emerg; February 19, 1987, Reg; June 16, 2009, Susp. | .....do | Do. |
| Weiser, City of, Washington County | 160124 | December 4, 1974, Emerg; February 19, 1987, Reg; June 16, 2009, Susp. | .....do | Do. |

* do=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 8, 2009.

**Edward L. Connor,**

*Acting Assistant Administrator Mitigation Directorate Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E9–14271 Filed 6–16–09; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

**[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1055]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

*Executive Order 12988, Civil Justice Reform.* This interim rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: | | | | | |
| Maricopa | Town of Gilbert (08–09–1488P). | April 23, 2009; April 30, 2009; *Arizona Business Gazette*. | The Honorable Steven M. Berman, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296. | April 8, 2009 | 040044 |
| Maricopa | Unincorporated areas of Maricopa County (08–09–1488P). | April 23, 2009; April 30, 2009; *Arizona Business Gazette*. | The Honorable Andrew W. Kunasek, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | April 8, 2009 | 040037 |
| Maricopa | Town of Queen Creek (08–09–1488P). | April 23, 2009; April 30, 2009; *Arizona Business Gazette*. | The Honorable Art Sanders, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, AZ 85242. | April 8, 2009 | 040132 |
| Navajo | Unincorporated areas of Navajo County (08–09–1857P). | April 22, 2009; April 29, 2009; *The Tribune News*. | The Honorable J.R. Despain, Chairman, Navajo County, Board of Supervisors, P.O. Box 668, Holbrook, AZ 86025. | August 27, 2009 | 040066 |
| Florida: Polk | Unincorporated areas of Polk County (09–04–1385P). | April 8, 2009; April 15, 2009; *The Polk County Democrat*. | The Honorable Sam Johnson, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831–9005. | August 13, 2009 | 120261 |
| Idaho: Blaine | Unincorporated areas of Blaine County (09–10–0307P). | April 22, 2009; April 29, 2009; *Idaho Mountain Express*. | The Honorable Tom Bowman, Chairman, Blaine County Board of Commissioners, 206 First Street South, Suite 300, Hailey, ID 83333. | April 14, 2009 | 165167 |
| Iowa: | | | | | |
| Crawford | City of Denison (08–07–1528P). | April 10, 2009; April 17, 2009; *Denison Bulletin & Review*. | The Honorable Nathan Mahrt, Mayor, City of Denison, P.O. Box 668, Denison, IA 51442. | August 17, 2009 | 190096 |
| Polk | City of Ankeny (08–07–1252P). | April 22, 2009; April 29, 2009; *Des Moines Register*. | The Honorable Steve Van Oort, Mayor, City of Ankeny, 410 West First Street, Ankeny, IA 50023. | April 13, 2009 | 190226 |
| Missouri: St. Louis | City of Richmond Heights (09–07–0908P). | April 30, 2009; May 7, 2009; *The Countian*. | The Honorable James J. Beck, Mayor, City of Richmond Heights, 1330 South Big Bend Boulevard, Richmond Heights, MO 63117. | September 8, 2009 | 290380 |
| Montana: | | | | | |
| Flathead | Unincorporated areas of Flathead County (08–08–0361P). | May 1, 2009; May 8, 2009; *Daily Inter Lake*. | The Honorable Dale W. Lauman, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, MT 59901. | April 21, 2009 | 800023 |
| Stillwater | Unincorporated areas of Stillwater County (07–08–0854P). | July 17, 2008; July 24, 2008; *Stillwater County News*. | The Honorable Dennis R. Hoyem, Chairman, Stillwater County Board of Commissioners, P.O. Box 970, Columbus, MT 59019. | November 24, 2008 | 300078 |
| North Carolina: | | | | | |
| Orange | Town of Chapel Hill (09–04–1756P). | March 26, 2009; April 2, 2009; *Chapel Hill Herald*. | The Honorable Kevin C. Foy, Mayor, Town of Chapel Hill, Mayor's Office, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514. | July 31, 2009 | 370180 |
| Wake | Wake County (Unincorporated Areas) (08–04–5834P). | March 13, 2009; March 20, 2009; *The News & Observer*. | Mr. David C. Cooke, Manager, Wake County, P.O. Box 550, Suite 1100, Raleigh, NC 27602. | July 17, 2009 | 370368 |

| State and county | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Wake | Town of Holly Springs (08–04–5834P). | March 13, 2009; March 20, 2009; *The News & Observer.* | The Honorable Dick Sears, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540. | July 17, 2009 | 370403 |
| Texas: | | | | | |
| Hunt | Unincorporated areas of Hunt County (08–06–1912P). | April 22, 2009; April 29, 2009; *Herald Banner.* | The Honorable John Horn, Hunt County Judge, P.O. Box 1097, Greenville, TX 75403. | April 10, 2009 | 480363 |
| Tarrant | City of Arlington (09–06–0207P). | March 30, 2009; April 6, 2009; *Star Telegram.* | The Honorable Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004. | August 4, 2009 | 485454 |
| Tarrant | City of Fort Worth (08–06–1200P). | April 7, 2009; April 14, 2009; *Star Telegram.* | The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | March 27, 2009 | 480596 |
| Wisconsin: St. Croix | Village of Baldwin (09–05–1751P). | April 28, 2009; May 5, 2009; *The Baldwin Bulletin.* | The Honorable Donald McGee, President, Village of Baldwin, P.O. Box 97, Baldwin, WI 54002. | April 16, 2009 | 550380 |

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

Dated: June 9, 2009.

**Edward L. Connor,**

*Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E9–14278 Filed 6–16–09; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2008–0020]**

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

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

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

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

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|---|---|---|---|
| **Ashe County, North Carolina, and Incorporated Areas Docket No.: FEMA–B–1010** | | | |
| Bear Creek | Approximately 600 feet upstream of the confluence with South Fork New River. | +2677 | Unincorporated Areas of Ashe County. |
| | Approximately 1.8 miles upstream of NC 16 Highway | +2826 | |
| Beaver Creek | Approximately 1,500 feet downstream of Mash Stuart Road (State Road 1199). | +2872 | Unincorporated Areas of Ashe County, Town of West Jefferson. |
| | Approximately 350 feet upstream of Earl Ray Road (State Road 1144). | +3120 | |
| Big Horse Creek | Approximately 550 feet upstream of the confluence with North Fork New River. | +2645 | Unincorporated Areas of Ashe County, Town of Lansing. |
| | Approximately 0.6 mile upstream of Farmers Store Road (State Road 1360). | +3642 | |
| Big Laurel Creek | At the confluence with North Fork New River | +2814 | Unincorporated Areas of Ashe County. |
| | Approximately 40 feet downstream of Denny Road (State Road 1326). | +3232 | |
| Big Windfall Branch | At the confluence with Big Horse Creek | +2707 | Unincorporated Areas of Ashe County. |
| | Approximately 300 feet downstream of Big Windfall Road (State Road 1353). | +3039 | |
| Brush Fork | Approximately 500 feet upstream of the confluence with North Fork New River. | +3029 | Unincorporated Areas of Ashe County. |
| | Approximately 75 feet upstream of West Brushy Fork Road (State Road 1302). | +3155 | |
| Buffalo Creek | At the second crossing of Warrensville Drive (State Road 1507). | +2687 | Unincorporated Areas of Ashe County. |
| | Approximately 0.7 mile upstream of Perry Road | +3046 | |
| Cabbage Creek | Approximately 100 feet upstream of the confluence with North Fork New River. | +2897 | Unincorporated Areas of Ashe County. |
| | Approximately 360 feet upstream of Cabbage Creek Road (State Road 1307). | +2963 | |
| Cabbage Creek Tributary | At the confluence with Cabbage Creek | +2942 | Unincorporated Areas of Ashe County. |
| | Approximately 1,500 feet upstream of the confluence with Cabbage Creek. | +2959 | |
| Call Creek | At the confluence with Old Field Creek | +2888 | Unincorporated Areas of Ashe County. |
| | Approximately 200 feet downstream of East Mill Creek Road (State Road 1112). | +3055 | |
| Cole Branch | Approximately 1.1 miles upstream of the confluence with Beaver Creek. | +3045 | Town of West Jefferson. |
| | Approximately 1.2 miles upstream of the confluence with Beaver Creek. | +3071 | |
| Cranberry Creek | Approximately 950 feet upstream of the confluence with South Fork New River. | +2565 | Unincorporated Areas of Ashe County. |
| | Approximately 1.2 miles upstream of NC 88 Highway E | +2743 | |
| Cranberry Creek West | Approximately 630 feet upstream of the confluence with South Fork New River. | +2899 | Unincorporated Areas of Ashe County. |
| | Approximately 1,000 feet upstream of Cranberry Springs Road (State Road 1100). | +3029 | |
| East Fork | At the confluence with Pine Swamp Creek | +2910 | Unincorporated Areas of Ashe County. |
| | Approximately 0.8 mile upstream of Idlewild Road (State Road 1003). | +3057 | |
| Elk Creek (into South Fork New River). | Approximately 150 feet upstream of the confluence with South Fork New River. | +2955 | Unincorporated Areas of Ashe County. |
| | Approximately 1.3 miles upstream of Preacher Blackburn Road (State Road 1117). | +3071 | |
| Ezra Fork Creek | Approximately 1,560 feet upstream of U.S. Highway 221 | +2818 | Unincorporated Areas of Ashe County. |
| | Approximately 0.5 mile upstream of Highway U.S. 221 | +2838 | |
| Fees Branch | At the confluence with Helton Creek | +2890 | Unincorporated Areas of Ashe County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|---|---|---|---|
| | Approximately 500 feet upstream of Fees Branch Road (State Road 1372). | +2948 | |
| Gap Creek | Approximately 1,700 feet upstream of the confluence with South Fork New River. | +2863 | Unincorporated Areas of Ashe County. |
| | The Ashe/Watauga County boundary | +2952 | |
| Grassy Creek | At the confluence with New River | +2483 | Unincorporated Areas of Ashe County. |
| | Approximately 1.1 miles upstream of Old NC 16 Highway (State Road 1573). | +2679 | |
| Greer Branch | At the confluence with South Fork Little Horse Creek | +2905 | Unincorporated Areas of Ashe County. |
| | Approximately 0.6 mile upstream of Greer Hollow Road (State Road 1333). | +3037 | |
| Helton Creek | Approximately 1,200 feet upstream of the confluence with North Fork New River. | +2556 | Unincorporated Areas of Ashe County. |
| | Approximately 0.9 mile upstream of Fees Branch Road (State Road 1372). | +2962 | |
| Helton Creek Tributary 1 | At the confluence with Helton Creek | +2777 | Unincorporated Areas of Ashe County. |
| | Approximately 0.5 mile upstream of the confluence of Helton Creek Tributary 1A. | +2864 | |
| Helton Creek Tributary 1A | At the confluence with Helton Creek Tributary 1 | +2816 | Unincorporated Areas of Ashe County. |
| | Approximately 1,320 feet upstream of Spencer Branch Road (State Road 1373). | +2848 | |
| Jerd Branch | At the confluence with Helton Creek | +2805 | Unincorporated Areas of Ashe County. |
| | Approximately 1,093 feet upstream of NC Highway 194 | +2884 | |
| Jones Branch | At the confluence with Little Helton Creek | +2723 | Unincorporated Areas of Ashe County. |
| | At the Virginia/North Carolina state boundary | +2758 | |
| Little Buffalo Creek | At the confluence with Buffalo Creek | +2782 | Unincorporated Areas of Ashe County, Town of West Jefferson. |
| | Approximately 0.8 mile upstream of the confluence with Buffalo Creek. | +2981 | |
| Little Buffalo Creek Tributary 1 | At the confluence with Little Buffalo Creek | +2921 | Unincorporated Areas of Ashe County, Town of West Jefferson. |
| | Approximately 170 feet downstream of South Main Street | +2968 | |
| Little Helton Creek | At the confluence with Helton Creek | +2636 | Unincorporated Areas of Ashe County. |
| | Approximately 200 feet upstream of the Virginia/North Carolina state boundary. | +2757 | |
| Little Helton Creek Tributary 1 | At the confluence with Little Helton Creek | +2691 | Unincorporated Areas of Ashe County. |
| | Approximately 0.6 mile upstream of the confluence with Little Helton Creek. | +2750 | |
| Little Helton Creek Tributary 2 | At the confluence with Little Helton Creek | +2751 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of the confluence with Little Helton Creek. | +2798 | |
| Little Horse Creek | At the confluence with Big Horse Creek | +2665 | Unincorporated Areas of Ashe County. |
| | Approximately 1.1 miles upstream of Little Horse Creek Road (State Road 1324). | +3033 | |
| Little Laurel Creek | At the confluence with Big Laurel Creek | +2843 | Unincorporated Areas of Ashe County. |
| | Approximately 880 feet upstream of Little Laurel Road (State Road 1310). | +3323 | |
| Little Naked Creek | At the confluence with Naked Creek | +2686 | Unincorporated Areas of Ashe County. |
| | Approximately 1,490 feet upstream of East Landing Drive | +2712 | |
| Little Peak Creek | At the confluence with Peak Creek | +2608 | Unincorporated Areas of Ashe County. |
| | Approximately 0.5 mile upstream of Little Peak Creek Road. | +2690 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|---|---|---|---|
| Little Phoenix Creek | Approximately 250 feet upstream of the confluence with North Fork New River. | +2604 | Unincorporated Areas of Ashe County. |
| | Approximately 0.9 mile upstream of the confluence of Little Phoenix Creek Tributary. | +2836 | |
| Little Phoenix Creek Tributary | At the confluence with Little Phoenix Creek | +2727 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of Old NC Highway 16 (State Road 1573). | +2871 | |
| Little Piney Creek | At the confluence with Piney Creek | +2634 | Unincorporated Areas of Ashe County. |
| | Approximately 1,210 feet upstream of Piney Creek Road (State Road 1517). | +2679 | |
| Long Branch | At the confluence with Little Helton Creek | +2643 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of Jim Duvall Road (State Road 1528). | +2715 | |
| Long Branch South | At the confluence with North Fork New River | +2577 | Unincorporated Areas of Ashe County. |
| | Approximately 500 feet upstream of Shatley Springs Road (State Road 1574). | +2648 | |
| Middle Fork Little Horse Creek | At the confluence with Little Horse Creek | +2936 | Unincorporated Areas of Ashe County. |
| | Approximately 0.9 mile upstream of East Big Springs Road (State Road 1319). | +3082 | |
| Middle Fork Little Horse Creek Tributary. | At the confluence with Middle Fork Little Horse Creek | +2995 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of the confluence with Middle Fork Little Horse Creek. | +3049 | |
| Mill Creek | Approximately 300 feet upstream of the confluence with North Fork New River. | +2738 | Unincorporated Areas of Ashe County. |
| | Approximately 1.7 miles upstream of West Mill Creek Road (State Road 1340). | +2935 | |
| Mill Creek (South) | Approximately 450 feet upstream of the confluence with South Fork New River. | +2906 | Unincorporated Areas of Ashe County. |
| | Approximately 365 feet upstream of Mill Creek Road (State Road 1109). | +3051 | |
| Naked Creek | Approximately 0.5 mile upstream of the confluence with South Fork New River. | +2665 | Unincorporated Areas of Ashe County, Town of Jefferson. |
| | Approximately 400 feet upstream of South Main Street | +2920 | |
| Naked Creek Tributary 2 | At the confluence with Naked Creek | +2908 | Town of Jefferson. |
| | Approximately 1,190 feet upstream of West Main Street | +2940 | |
| Nathans Creek | Approximately 250 feet upstream of the confluence with South Fork New River. | +2579 | Unincorporated Areas of Ashe County. |
| | Approximately 550 feet upstream of U.S. 221 Highway | +2718 | |
| New River | Approximately 500 feet downstream of the Ashe/Alleghany County boundary. | +2480 | Unincorporated Areas of Ashe County. |
| | At the confluence of the North Fork New River and South Fork New River. | +2487 | |
| North Fork New River | At the confluence with New River and South Fork New River. | +2487 | Unincorporated Areas of Ashe County. |
| | Approximately 50 feet downstream of West Peak Road (State Road 1119). | +3023 | |
| North Fork New River Tributary 1. | At the confluence with North Fork New River | +2503 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of the confluence with North Fork New River. | +2557 | |
| Obids Creek | Approximately 350 feet upstream of the confluence with South Fork New River. | +2718 | Unincorporated Areas of Ashe County. |
| | Approximately 250 feet upstream of Idlewild Road (State Road 1003). | +2874 | |
| Old Field Branch | At the confluence with Big Horse Creek | +2660 | Unincorporated Areas of Ashe County, Town of Lansing. |
| | Approximately 0.5 mile upstream of Glenn King Road (State Road 1519). | +2853 | |
| Old Field Creek | Approximately 1,400 feet upstream of the confluence with South Fork New River. | +2874 | Unincorporated Areas of Ashe County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|---|---|---|---|
| | Approximately 0.7 mile upstream of Mulatto Mountain Road (State Road 1145). | +3048 | |
| Old Field Creek (North) | Approximately 300 feet upstream of the confluence with North Fork New River. | +2566 | Unincorporated Areas of Ashe County. |
| | Approximately 0.5 mile upstream of the confluence with North Fork New River. | +2693 | |
| Peak Creek | Approximately 1,500 feet upstream of the confluence with South Fork New River. | +2604 | Unincorporated Areas of Ashe County. |
| | Approximately 1.2 miles upstream of NC Highway 88 | +2866 | |
| Pine Swamp Creek | Approximately 850 feet upstream of the confluence with South Fork New River. | +2837 | Unincorporated Areas of Ashe County. |
| | Approximately 0.7 mile upstream of Idlewild Road (State Road 1003). | +3010 | |
| Piney Creek | Approximately 250 feet upstream of the confluence with North Fork New River. | +2624 | Unincorporated Areas of Ashe County. |
| | Approximately 150 feet upstream of Piney Creek Road (State Road 1517). | +2685 | |
| Rich Hill Creek | At the confluence with North Fork New River | +2799 | Unincorporated Areas of Ashe County. |
| | Approximately 1.1 miles upstream of NC Highway 88 | +2920 | |
| Roan Creek | Approximately 650 feet upstream of the confluence with South Fork New River. | +2666 | Unincorporated Areas of Ashe County. |
| | Approximately 340 feet upstream of Earl Sheets Road (State Road 1625). | +2919 | |
| Roaring Fork | At the confluence with Big Laurel Creek | +2917 | Unincorporated Areas of Ashe County. |
| | Approximately 0.4 mile upstream of Roaring Fork Road (State Road 1320). | +3078 | |
| Rock Creek | Approximately 120 feet upstream of NC Highway 88 | +2942 | Unincorporated Areas of Ashe County. |
| | Approximately 1.4 miles upstream of NC 88 Highway | +3125 | |
| Shippy Branch | At the confluence with Little Helton Creek | +2730 | Unincorporated Areas of Ashe County. |
| | At the Virginia/North Carolina state boundary | +2774 | |
| Silas Creek | At the confluence with North Fork New River | +2583 | Unincorporated Areas of Ashe County. |
| | Approximately 1.0 mile upstream of the confluence of Silas Creek Tributary 2. | +2795 | |
| Silas Creek Tributary 1 | At the confluence with Silas Creek | +2691 | Unincorporated Areas of Ashe County. |
| | Approximately 1,376 feet upstream of the confluence with Silas Creek. | +2782 | |
| Silas Creek Tributary 2 | At the confluence with Silas Creek | +2709 | Unincorporated Areas of Ashe County. |
| | Approximately 1,516 feet upstream of the confluence with Silas Creek. | +2805 | |
| South Beaver Creek | Approximately 400 feet upstream of the confluence with Beaver Creek. | +2792 | Unincorporated Areas of Ashe County. |
| | Approximately 1,800 feet upstream of Lakeside Drive | +2941 | |
| South Fork Little Horse Creek | At the confluence with Little Horse Creek | +2769 | Unincorporated Areas of Ashe County. |
| | Approximately 785 feet upstream of Jack Jones Road (State Road 1332). | +2933 | |
| South Fork New River | At the confluence with New River and North Fork New River. | +2487 | Unincorporated Areas of Ashe County. |
| | Approximately 2.3 miles upstream of Kings Creek Road (State Road 1308). | +2524 | |
| South Fork New River Tributary 3. | Approximately 350 feet upstream of the confluence with South Fork New River. | +2685 | Unincorporated Areas of Ashe County. |
| | Approximately 1,200 feet upstream of Claude Mash Road (State Road 1158). | +2844 | |
| South Fork New River Tributary 4. | Approximately 400 feet upstream of the confluence with South Fork New River. | +2815 | Unincorporated Areas of Ashe County. |
| | Approximately 0.8 mile upstream of Lower Nettle Knob Road (State Road 1181). | +2894 | |
| Stagg Creek | Approximately 350 feet upstream of the confluence with North Fork New River. | +2702 | Unincorporated Areas of Ashe County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|---|---|---|---|
| | Approximately 1.4 miles upstream of Staggs Creek Road (State Road 1342). | +2861 | |
| Three Top Creek | At the confluence with North Fork New River | +2858 | Unincorporated Areas of Ashe County. |
| | Approximately 1,830 feet upstream of Bald Fork Road | +3273 | |
| West Fork | At the confluence with Pine Swamp Creek | +2862 | Unincorporated Areas of Ashe County. |
| | Approximately 990 feet upstream of Creekside Drive | +3124 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**Town of Jefferson**
Maps are available for inspection at the Jefferson Town Hall, 302 East Main Street, Jefferson, NC 28640.

**Town of Lansing**
Maps are available for inspection at the Lansing Town Hall, 173 B Street, Lansing, NC 28643.

**Town of West Jefferson**
Maps are available for inspection at the West Jefferson Town Hall, 1 South Jefferson Avenue, West Jefferson, NC 28694.

**Unincorporated Areas of Ashe County**
Maps are available for inspection at the Ashe County Building Inspector's Office, 150 Government Circle, Suite 2400, Jefferson, NC 28640.

**Grant County, South Dakota, and Incorporated Areas**
**Docket No.: FEMA–B–1004**

| | | | |
|---|---|---|---|
| South Fork Whetstone River | Approximately 48 feet upstream of 479th Avenue | +1116 | City of Milbank, Unincorporated Areas of Grant County. |
| | Approximately 790 feet upstream of North Dakota Street | +1132 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Milbank**
Maps are available for inspection at the Milbank City Offices, 1001 East 4th Avenue, Milbank, SD 57252.

**Unincorporated Areas of Grant County**
Maps are available for inspection at the Grant County Courthouse, 210 East 5th Avenue, Milbank, SD 57252.

**Fond Du Lac County, Wisconsin, and Incorporated Areas**
**Docket No.: FEMA–B–7724**

| | | | |
|---|---|---|---|
| McDermott Creek | Approximately 0.4 mile downstream of County Highway T | +777 | City of Fond Du Lac, Unincorporated Areas of Fond Du Lac County. |
| | Approximately 0.4 mile upstream of County Highway T | +808 | |
| Mosher Creek | Approximately 300 feet upstream of U.S. Highway 45 (Lakeshore Drive). | +749 | Village of North Fond Du Lac, Unincorporated Areas of Fond Du Lac County. |
| | Approximately 200 feet upstream of McKinley Street | +767 | |
| Rush Lake | Approximately 0.6 mile Northwest of the intersection of Island Road and Elbow Road. | +823 | Unincorporated Areas of Fond Du Lac County. |
| | Approximately 0.5 mile Northeast of the intersection of Rich Road and County Highway E. | +823 | |
| South Branch, Rock River | Just downstream of Northbound U.S. Highway 151 | +871 | Unincorporated Areas of Fond Du Lac County. |
| | Just upstream of Southbound U.S. Highway 151 | +871 | |
| Taycheedah Creek | Approximately 0.5 mile downstream of DuCharme Parkway. | +754 | City of Fond Du Lac, Unincorporated Areas of Fond Du Lac County. |
| | Just downstream of state Highway 23 | +768 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Fond Du Lac**

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>Modified | Communities affected |
|---|---|---|---|

Maps are available for inspection at City Hall, 160 South Macy Street, Fond Du Lac, WI 54935–0150.

**Unincorporated Areas of Fond Du Lac County**

Maps are available for inspection at Fond Du Lac County Courthouse, 160 South Macy Street, Fond Du Lac, WI 54935.

**Village of North Fond Du Lac**

Maps are available for inspection at the Village Hall, North Fond Du Lac, 16 Garfield Street, North Fond Du Lac, WI 54937–1399.

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

Dated: June 9, 2009.

**Edward L. Connor,**

*Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E9–14276 Filed 6–16–09; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 080728943–9716–02]**

**RIN 0648–AX12**

## Atlantic Highly Migratory Species; 2009 Atlantic Bluefin Tuna Quota Specifications and Effort Controls; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS published a final rule in the **Federal Register** on June 1, 2009, concerning the final 2009 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery, including quotas for each of the established domestic fishing categories and effort controls for the General category and Angling category. While the effective dates in the **DATES** section were correct, the rule contained a typo with regard to effective dates of the BFT daily retention limits in the **SUPPLEMENTARY INFORMATION** section. This document corrects that typo.

**DATES:** This correction is effective on June 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978–281–9260.

**SUPPLEMENTARY INFORMATION:**

### Correction

In rule FR Doc. E9–12654 that published in the **Federal Register** on June 1, 2009 (74 FR 26112) make the following correction. On page 26112, in the first column, revise **SUPPLEMENTARY INFORMATION** sections IV and V to read as follows:

### IV. General Category Effort Controls

Because of the large quota available for the General category, NMFS increases the daily retention limit of BFT for the June-August subperiod from the default one-fish retention limit to a three-fish limit. Therefore, persons aboard vessels permitted in the General category may retain three large medium or giant BFT (measuring 73 inches or greater) per vessel per day/trip from June 1, 2009 through August 31, 2009. The BFT retention limit may be adjusted via inseason action, if warranted, under § 635.23(a)(4).

### V. Angling Category Effort Controls

This final rule establishes an Angling category retention limit of one school BFT (27 inches to less than 47 inches), and one large school/small medium BFT (47 inches to less than 73 inches) per vessel per day/trip. This retention limit is effective for persons aboard vessels permitted in the Angling category from June 1, 2009 through December 31, 2009. This retention limit may be adjusted via inseason action, if warranted, under § 635.23(b)(3).

Dated: June 11, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9–14265 Filed 6–16–09; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 74, No. 115
Wednesday, June 17, 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.

## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Part 1233

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR 1731

**RIN 2590–AA11**

## Reporting of Fraudulent Financial Instruments

**AGENCY:** Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a proposed regulation that would require the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (regulated entities) to report to FHFA any fraudulent financial instruments that they purchased or sold. The proposed regulation would also require the regulated entities to establish and maintain internal controls, procedures, and training programs to ensure that any such fraudulent instruments are detected and reported.

**DATES:** Written comments on the proposed regulation must be received on or before August 17, 2009. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590–AA11, by any of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA11, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA11, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov*. Please include ''RIN 2590–AA11'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA11'' in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Andra Grossman, Counsel, telephone (202) 343–1313 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Comments

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

### II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), the Federal Home Loan Banks (Banks) (collectively, regulated entities) and to ensure that they operate in a safe and sound manner; remain adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders, issued thereunder; and carry out their missions through activities that are authorized by the above-cited statutes and are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are supplanted by regulations promulgated by FHFA.

In 2005, OFHEO issued a regulation requiring the Enterprises to report mortgage fraud and to establish internal controls, procedures, and training programs to ensure that mortgage fraud is detected and prevented. As part of this rulemaking, that regulation, 12 CFR part 1731, ''Mortgage Fraud Reporting,'' would be removed when this regulation becomes effective.

### III. Proposed Regulation

Section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(a)), subjects the regulated entities to both a reporting and an internal controls requirement. Under this statutory provision, the Director must require a regulated entity to submit a timely report upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, the Director must require each regulated entity to

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, Section 1101 of HERA.

establish and maintain procedures designed to discover any such transactions.

Section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)) also provides each regulated entity, and any entity-affiliated party, protection from liability in making a report, or requiring another to make any report, if it acts in good faith. This protection extends to any liability arising under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for the submission of any report or for any failure to notify persons who are the subject of, or who are identified in, the report.

In addition, Congress has continued to emphasize combating mortgage fraud as a key element in stabilizing mortgage markets and protecting homeowners and investors. The recently enacted Fraud Enforcement and Recovery Act of 2009, Public Law 111–21 (2009), provides new funding for anti-fraud efforts, enhances federal penalties and includes a review of the current financial and economic crisis.

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, liquidity mission, affordable housing and community development mission, capital structure, and joint and several liability. The Director may also consider any other differences that are deemed appropriate. The purpose of this proposed rule is to implement statutory provisions that address possible risks to the regulated entities associated with fraudulent loans or other instruments. Although the respective businesses in which the Banks and the Enterprises are engaged differ, all of them are involved to some degree in providing financing to the residential mortgage market and thus may be exposed to the risk of fraud, particularly when investing in whole mortgage loans. In preparing the proposed regulation, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director believes that none of the unique factors relating to the Banks warrants establishing different treatment under the proposed regulation. However, detailed guidance may be issued that would address specific business or operational differences with respect to the regulated entities. Nonetheless, the Director requests comments about whether it would be appropriate to include in a final rule any provisions relating to the differences between the Banks and the Enterprises.

## IV. Section-by-Section Analysis

*Section 1233.1 Purpose*

This section as proposed would require each regulated entity to report to FHFA the discovery of fraud or possible fraud, in connection with a loan or other financial instrument that it has purchased or sold, and to establish internal controls, procedures, and training programs to detect and report such fraud.

*Section 1233.2 Definitions*

This section provides definitions for the terms contained in the proposed regulation.

*Bank* or *Federal Home Loan Bank* would be defined as a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

*Director* would be defined as the Director of FHFA or his or her designee.

*Enterprise* would be defined as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and any affiliate thereof.

*Entity-affiliated party* would be defined as—

- Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;
- Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;
- Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if:
  - ○ The independent contractor knowingly or recklessly participates in—
    - —Any violation of any law or regulation;
    - —Any breach of fiduciary duty; or
    - —Any unsafe or unsound practice; and
  - ○ Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;
- Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and
- The Office of Finance.

*Fraud* would be defined as a material misstatement, misrepresentation, or omission relied upon by a regulated entity.

*Possible fraud* would be defined as a situation that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

*Regulated entity* would be defined as the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

*Safety and Soundness Act* would be defined as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

*Section 1233.3 Reporting*

This section as proposed sets forth the procedures for reporting fraud and possible fraud to FHFA, and requires a regulated entity to report promptly any fraud or possible fraud in writing to the Director. This section also provides that if the situation requires the immediate attention of FHFA, a regulated entity must report the matter to FHFA immediately by telephone or electronic communication. FHFA expects that it would issue guidance and instructions with respect to the format and content of fraud reports. This proposed section would allow the regulated entities to use fraud-reporting formats used by other agencies with jurisdiction over such fraud, but only upon receipt of written notice from the Director. For instance, under the Bank Secrecy Act of 1970, banking regulatory agencies require the completion and submission of Suspicious Activity Reports to the United States Department of the Treasury Financial Crimes Enforcement Network. The section as proposed would further provide for retention of records by a regulated entity and would

prohibit the disclosure of reporting fraud or possible fraud to the parties connected with such fraud without the prior written approval of the Director. This requirement would not prevent a regulated entity from disclosing or reporting such fraud pursuant to legal requirements, including disclosure to appropriate law enforcement authorities. Finally, this section reiterates a statutory provision that makes clear that a regulated entity does not waive any privilege it may otherwise possess as a result of reporting fraud or possible fraud to FHFA under these provisions.

*Section 1233.4 Internal Controls, Procedures and Training*

This section as proposed would require each regulated entity to establish adequate and efficient internal controls and procedures, as well as an operational training program, to assure that it has in place an effective system to detect and report any fraud.

*Section 1233.5 Protection From Liability for Reports*

This section as proposed would provide that a regulated entity and any entity-affiliated party that submits a report pursuant to this part, in good faith (or requires another person to submit such a report), cannot be held liable either for submitting the report, or for failing to notify any person who is the subject of such report, or is identified in the report.

*Section 1233.6 Supervisory Action*

This section as proposed would address that failure to comply with the requirements of the final regulation may subject a regulated entity or its board members, officers, or employees to supervisory action by FHFA under the Safety and Soundness Act, including but not limited to, cease-and-desist proceedings and civil money penalties.

**Regulatory Impact**

*Paperwork Reduction Act*

As the proposed regulation pertains to the regulated entities, it does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). In this case, the proposed regulation would apply only to the regulated entities, none of which are small entities for purposes of this requirement. Accordingly, FHFA hereby certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act.

**List of Subjects**

*12 CFR Part 1233*

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

*12 CFR Part 1731*

Administrative practice and procedure, Government-sponsored enterprises.

**Authority and Issuance**

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4514, 4526, and 4642, the Federal Housing Finance Agency proposes to amend chapters XII and XVII of Title 12, Code of Federal Regulations, as follows:

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**Subchapter B—Entity Regulations**

1. Add part 1233 to subchapter B to read as follows:

## PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

### Subpart A—General

Sec.
1233.1 Purpose.
1233.2 Definitions.
1233.3 Reporting.
1233.4 Internal controls, procedures, and training.
1233.5 Protection from liability for reports.
1233.6 Supervisory action.

**Authority:** 12 U.S.C. 4514, 4526, 4642.

### Subpart A—General

**§ 1233.1 Purpose.**

The purpose of this part is to implement section 1379E of the Safety and Soundness Act (12 U.S.C. 4642) by requiring each regulated entity to report to FHFA any known or possible fraud in connection with a loan or other financial instrument that it has purchased or sold, and by requiring each regulated entity to establish internal controls, procedures, and training programs designed to detect and report such fraud.

**§ 1233.2 Definitions.**

The following definitions apply to the terms used in this part:

*Bank* or *Federal Home Loan Bank* means a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

*Director* means the Director of FHFA or his or her designee.

*Enterprise* means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and any affiliate thereof.

*Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if:

(i) The independent contractor knowingly or recklessly participates in—

(A) Any violation of any law or regulation;

(B) Any breach of fiduciary duty; or

(C) Any unsafe or unsound practice; and

(ii) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

*Fraud* means a material misstatement, misrepresentation, or omission relied upon by a regulated entity.

*Possible fraud* means that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

*Regulated entity* means the Federal National Mortgage Association and any

affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

*Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

**§ 1233.3 Reporting.**

(a) *Timeframe for reporting.* (1) A regulated entity shall submit to the Director a written report relating to any fraud or possible fraud occurring in connection with a loan, a series of loans or other financial instruments that the regulated entity has purchased or sold, and shall do so promptly after identifying such fraud or possible fraud or is notified about such fraud or possible fraud by law enforcement or other government authority.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b) *Format for reporting.* (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe.

(2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud as the Director deems appropriate.

(3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency, provided it has first obtained the prior written approval of the Director.

(c) *Retention of records.* A regulated entity shall maintain a copy of any report submitted to the Director and the original or business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

**§ 1233.4 Internal controls, procedures, and training.**

(a) *In General.* Each regulated entity shall establish and maintain adequate and efficient internal controls and procedures and an operational training program to assure an effective system to detect and report fraud in connection with the purchase or sale of a loan or other financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity must include an evaluation of the extent to which internal policies, procedures, and training programs of the regulated entity minimize risks from fraud and to the extent that fraud or possible fraud is consistently reported to FHFA.

**§ 1233.5 Protection from liability for reports.**

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report to the person who is the subject of such report, or any other persons identified in the report.

**§ 1233.6 Supervisory action.**

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

**CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

## PART 1731—[REMOVED]

2. Remove part 1731.

Dated: June 4, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E9–14189 Filed 6–16–09; 8:45 am]

BILLING CODE P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AD15**

**[Docket ID MMS–2008–OMM–0003]**

## Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The MMS proposes to require operators to develop and implement a Safety and Environmental Management System to address oil and gas operations in the Outer Continental Shelf. The Safety and Environmental Management System would consist of four elements—Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity—that, until now, have not been covered in our regulations. The MMS analyzed accident panel investigation reports, incident reports, and incidents of noncompliance and determined that the root cause of most safety and environmental accidents and incidents is one or more of these four elements. The MMS believes that requiring operators to implement a Safety and Environmental Management System will reduce the risk and number of accidents, injuries, and spills during Outer Continental Shelf activities.

**DATES:** Submit comments by September 15, 2009. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by July 17, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010-AD15 as an identifier in your message. *See* also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Minerals Management Service'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS–2008–OMM–0003 to submit public comments and to view supporting and related materials available for this rulemaking. 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. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations, 1010–AD15'' in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD15, Office of Management and Budget; 202–395–6566 (fax); e-mail: *oira_docket@omb.eop.gov*. Please also send a copy to MMS.

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues contact David Nedorostek, Safety and Enforcement Branch at *david.nedorostek@mms.gov* or (703) 787–1029.

**SUPPLEMENTARY INFORMATION:** On May 22, 2006, MMS published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (71 FR 29277) to seek comments and information on how to improve our regulatory approach to Safety and Environmental Management Systems (SEMS) for operations conducted in the Outer Continental Shelf (OCS). The ANPR examined a variety of approaches to implementing SEMS from voluntary to mandatory, and from partial SEMS to comprehensive SEMS.

During the ANPR comment period, eight comments were received from the public. One comment recommended keeping SEMS voluntary. Three comments recommended keeping SEMS voluntary, but if MMS decided to mandate a SEMS, it should be a partial SEMS requirement due to the number of accidents that are related to the four critical elements identified. A partial SEMS would consist of: Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity. The other four comments received recommended that MMS move forward with a comprehensive SEMS approach, *i.e.*, the 12 elements listed in American Petroleum Institute's (API) Recommended Practice (RP) 75, *Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004*. A comprehensive SEMS would consist of:

- Safety and environmental information;
- Hazards analysis;
- Management of change;
- Operating procedures;
- Safe work practices;
- Training;
- Mechanical integrity;
- Pre-startup review;
- Emergency response and control;
- Investigations of incidents;
- Auditing; and
- Records and documentation.

Most comments expressed that API RP 75 provides excellent guidance on developing a SEMS plan, and allows operators and contractors to tailor the program to their individual needs and corporate cultures. The commenters do not support MMS approving SEMS plans, rather, a third party should determine or certify whether a SEMS plan is viable, because MMS may not have the resources and expertise to approve a minimum of one plan for each OCS operator.

After reviewing and discussing the comments, MMS proposes to require each offshore lessee/operator to develop, implement, maintain, and operate under a SEMS program composed of the four elements. This decision was based on incident investigation findings, and performance reviews with operators which confirmed that the majority of the accidents on the OCS are related to the four elements in the proposed rule (*i.e.*, Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity). Since the existing regulations (30 CFR 250) do not specifically address these four elements, MMS finds that it is appropriate to cover these SEMS elements in its rule. Each SEMS program would be tailored to the scale and complexity of the company's operation, and structured to include accountability for contractors and subcontractors. The SEMS program would describe management commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by contractor and subcontractor personnel). As company management and worker attitudes play a critical role in determining the safety of operations and environmental protection, a SEMS program would play a major role in focusing the attention of top management on safety and the marine and coastal environments. This will assure to the greatest extent possible, a broad organizational commitment to human safety and environmental protection.

The MMS proposes that the SEMS program contain the four elements mentioned above which are described in greater detail as:

**Hazards Analyses**

This element would require that a hazards analysis (facility level) be conducted for all facilities. The purpose of the analysis is to identify, evaluate, and where unacceptable, reduce the likelihood and/or minimize the consequences of uncontrolled releases of oil and gas and other safety or environmental incidents. With respect to analysis methods, MMS suggests that operators use API RP 14 C, *Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001;* or API RP 14J, *Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001,* as guides, as well as other accepted documents and practices. In addition, this element would also require that a job hazard analysis (operations/task level) be performed to identify and evaluate hazards of a job/task for the purpose of hazards control or elimination.

**Management of Change (MOC)**

This element would require lessees/operators to document and analyze all proposed facility changes to determine possible adverse safety and environmental impacts, with the exception of replacement in kind. There are a number of specific topics to be covered in this analysis, including changes in: facilities and procedures, personnel, work practices, equipment (including addition of new equipment or modifications to existing equipment), and the safety and environmental implications of these changes.

**Operating Procedures**

This element would require OCS oil and gas operators' management officials to include requirements for written facility operating procedures designed to enhance efficient, safe, and environmentally sound operations. While operating procedures are reviewed as part of MOC procedures, MMS would also recommend that these procedures be reviewed separately to ensure that they reflect current practices.

**Mechanical Integrity**

This element would require that procedures are in place to ensure that equipment is designed, fabricated, installed, tested, inspected, monitored, and maintained in a manner consistent with appropriate service requirements, manufacturer's recommendations, and industry standards to promote safe and environmentally sound operations in the OCS.

The proposed decision to require a SEMS program consisting of the four elements is based on incident investigation findings, an analyses of Incidents of Noncompliance (INC) data, performance reviews with operators, and the fact that existing MMS regulations do not address these four elements. Requiring operators to implement these four elements of an integrated SEMS program would address human factor issues in safety and environmental protection. Most industrial accidents and spills result from human error or organizational errors, not device or equipment failure. These four elements would address these types of accidents by encouraging the use of sound management principles and safety procedures.

The MMS's evaluation of safety information, which led us to the decision to require a SEMS program, included the following:

**Accident Panel Investigation Reports**

Accident panel investigation reports are prepared by MMS for select major accidents. An analysis of 33 accident panel reports prepared by MMS from 2000–2007 revealed that many fatalities and injuries occurred while performing routine tasks such as drilling, construction, coil tubing operations, and crane and other lifting events.

In addition, most of these accident panel reports made recommendations that relate to one of the following four SEMS elements: Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity.

The accident panel reports can be viewed at the following Web site address:*http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/accindex.html*

CONTRIBUTING CAUSES

| MMS report | Hazards analysis | Operating procedures | Mechanical integrity | Management of change | Injury number | Fatality number |
|---|---|---|---|---|---|---|
| MMS 2007–058 | X | X | | X | | 1 |
| MMS 2007–045 | X | X | | X | | 1 |
| MMS 2007–037 | X | X | | | | 1 |
| MMS 2006–070 | X | X | X | | | 1 |
| MMS 2006–058 | X | X | | | | |
| MMS 2006–047 | X | X | | | | |
| MMS 2006–039 | | X | | | | |
| MMS 2006–021 | | X | | | | |
| MMS 2006–002 | X | X | | | | 1 |
| MMS 2005–027 | | X | X | X | | |
| MMS 2005–007 | | X | X | | | |
| MMS 2004–078 | X | X | | X | | 1 |
| MMS 2004–075 | X | X | X | | | |
| MMS 2004–048 | | X | X | | | |
| MMS 2004–046 | X | X | | X | 3 | |
| MMS 2004–010 | X | | | | | |
| MMS 2004–004 | X | | | | | 1 |
| MMS 2003–068 | | X | | | | |
| MMS 2003–046 | | X | | | | |
| MMS 2003–023 | | | | X | | |
| MMS 2002–080 | | | | X | | |
| MMS 2002–076 | X | | X | X | | 1 |
| MMS 2002–075 | X | | | | | 1 |
| MMS 2002–062 | | | | X | 2 | 1 |
| MMS 2002–059 | X | | X | | 1 | 1 |
| MMS 2002–040 | | | X | | | |
| MMS 2001–084 | | | X | X | | |
| MMS 2001–045 | | | X | X | | 1 |
| MMS 2001–042 | X | | X | X | | 1 |
| MMS 2001–010 | X | | | X | 1 | |
| MMS 2001–009 | | X | | X | | |
| MMS 2001–005 | X | | | X | | |
| MMS 2000–089 | X | | X | | | 1 |
| Total = 33 | Total = 19 | Total = 18 | Total = 12 | Total = 15 | Total = 7 | Total = 14 |

The table shows that the accidents covered by 16 of the 33 panel reports resulted in a combined 21 fatalities and injuries. The analysis done on the accidents identified six contributing causes that are related to the four elements: (1) A lack of communication between the operator and contractor(s); (2) no job hazard analysis was conducted prior to beginning work, or there was a lack of written procedures; (3) an onsite supervisor failed to enforce existing procedures or practices; (4) a lack of written safe work procedural guidelines; (5) integrity of the facilities

and equipment were not maintained according to recommended practices; and (6) workplace hazards were not identified or corrected. The MMS maintains that at least some of these accidents could have been minimized or even prevented if the operator had implemented a SEMS.

**Incident Analysis**

The MMS also conducted a study of 1,443 incidents that occurred in OCS waters from 2001–2007 to determine if these events were associated with any of the 4 SEMS elements. The events reviewed included 41 fatalities, 302 injuries, 10 losses of well control, 11 collisions, 476 fires, 356 pollution events, and 224 crane and other lifting events (*e.g.*, hoists, winches, etc.).

The majority of incidents occurring in the OCS were related to operational and maintenance procedures or human error. These incidents are not addressed by the hardware-oriented compliance inspections used by MMS OCS inspectors. Additionally, of the 1,443 incidents involving injuries, fires, and pollution on or from production facilities, only 25 were due to failure of a safety device. The majority of the 1,443 incidents had at least 1 of the following 4 elements as a contributing cause for the event occurring:

| SEMS element | Number of incidents |
|---|---|
| Management of Change | 108 |
| Hazards Analysis | 185 |
| Mechanical Integrity | 475 |
| Operating Procedures | 481 |

**OCS Spill Analysis**

The MMS performed a root cause analysis of OCS spills over 50 barrels (bbls) from 2001–2007 with respect to the 4 elements. While root causes could be linked to failing to properly implement 1 of 4 elements, operating procedures and mechanical integrity contributed to the greatest number of these spills, and the 4 elements together could account for over ¾ of the OCS spills.

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Sums |
|---|---|---|---|---|---|---|---|---|
| Total OCS spills >50 bbl—Multiple spills, each >50 bbl, may occur during a single event. Spill categories include: crude/condensate; refined petroleum (diesel, mineral oil); synthetic-based fluids; and chemical (*e.g.*, ZnBr, Glycol). | 8 | 13 | 11 | 26 | 42 | 16 | 5 | ..... |
| Spills Related to Weather/Hurricanes | ..... | 4 | ..... | 15 | 35 | 4 | 1 | ..... |
| Spill Events Unrelated to Weather | 8 | 9 | 11 | 9 | 7 | 12 | 4 | ..... |
| Suggested Root Cause—Related to API RP 75: | | | | | | | | |
| Hazards Analysis | 1 | 1 | ..... | ..... | 1 | 1 | ..... | 4 |
| Management of Change | ..... | 1 | ..... | 1 | 1 | 1 | ..... | 4 |
| Operating Procedures | 3 | 4 | 5 | 5 | 3 | 5 | 1 | 26 |
| Mechanical Integrity | 4 | 1 | 2 | 1 | 1 | 2 | 3 | 14 |

**Incidents of Noncompliance (INCs)**

The MMS inspectors issue three General INCs (G-INCs) that potentially relate to elements within a SEMS. The following summarizes these INCs:

- G–110 (Operations conducted in a safe and workmanlike manner),
- G–111 (Equipment maintained in a safe condition), and
- G–112 (Safety of personnel and all necessary precautions taken to correct and remove any hazards).

The MMS issued 3,132 of these types of G–INCs during 2003–2007 for drilling and production activities. Of these 3,132 G–INCs, 2,964 (approximately 95 percent) were directly related to one or more of the following four SEMS elements: Hazards Analysis (including job hazard analysis), Operating Procedures, Mechanical Integrity, and Management of Change. The following table depicts the G–INCs written for drilling and production activities:

G–INCs Issued From 2003–2007

| SEMS elements | Drilling percentage | Production percentage |
|---|---|---|
| Management of Change | 10 | 11 |
| Hazards Analysis | 25 | 16 |
| Operating Procedures | 26 | 24 |
| Mechanical Integrity | 39 | 49 |

The MMS also reviewed records of violations of Environmental INCs (E–INCs). The E–INCs focus on water quality as it relates to mud/oil/chemical spills and marine debris (E–100 thru E–202). Over the past 7 years, MMS has issued about 150 E–INCs for non-compliant production and drilling operations during field inspections each year. The data indicate no discernible trend of improvement by industry over the past 7 years (see the following tables covering 2001–2007).

The MMS has issued many other INCs that relate to environmental protection, including those that address flaring and venting violations, broad-based non-compliance with lease stipulations, approved plans, and permit applications. Similar trends to those previously described for the issuance of E–INCs are also observed in the issuance of other INCs that address environmental concerns.

RATIO OF TOTAL PRODUCTION OPERATION E–INCS AND NUMBER OF COMPONENTS INSPECTED PER YEAR

| Year | Total E–INCs | Components inspected | Ratio * |
|---|---|---|---|
| 2001 | 156 | 66,065 | 0.0024 |
| 2002 | 173 | 68,355 | 0.0025 |
| 2003 | 134 | 66,056 | 0.0020 |
| 2004 | 141 | 67,267 | 0.0021 |
| 2005 | 122 | 61,520 | 0.0020 |
| 2006 | 133 | 56,930 | 0.0023 |
| 2007 | 111 | 46,384 | 0.0024 |

* Rounded.

RATIO OF TOTAL DRILLING OPERATION E–INCS AND NUMBER OF WELLS SPUD PER YEAR

| Year | Total E–INCs | Wells spud | Ratio * |
|---|---|---|---|
| 2001 | 19 | 1,264 | 0.015 |
| 2002 | 4 | 941 | 0.004 |
| 2003 | 10 | 893 | 0.011 |
| 2004 | 11 | 915 | 0.012 |
| 2005 | 10 | 817 | 0.012 |
| 2006 | 8 | 763 | 0.010 |
| 2007 | 7 | 607 | 0.012 |

* Rounded.

As a result of MMS research conducted on accident panel investigations and reports, incident analysis, and INCs, it appears that equipment failure is rarely the primary cause of the incident or accident. This is due to technological advances which have provided industry with very efficient and reliable equipment for finding, producing, and transporting offshore oil and gas. However, in most cases, accidents and oil spills can be traced to human error and/or organizational failures. For that reason, operators must ensure that safe and environmentally sound operating practices are followed. The MMS finds it important to focus our efforts on ensuring that those who use the equipment do so safely and responsibly. More progress can be made toward achieving our goal of clean and safe OCS operations by concentrating on human behavior. The MMS regulations, historically, have focused on the installation, operation, testing, and inspection of safety and pollution prevention equipment, and risk based safety practices related to personnel. Ensuring proper equipment operation, however, does not necessarily ensure clean and safe operations. The research consistently points to the disproportionate contribution of human and organizational errors to accidents and oil spills. The MMS believes that operations are safer when management systematically encourages individuals to be safety conscious, provides adequate resources, fosters safe worksite practices, promotes good housekeeping habits, and assures that workers are properly trained. The MMS believes that if OCS oil and gas operations are better planned and organized, then the likelihood of injury to workers and the risk of environmental pollution will be further reduced.

While this proposed rule requires each offshore lessee/operator to develop, implement, maintain, and operate a SEMS program consisting of the 4 elements identified in this proposed rule, nothing prohibits the lessee/operator from adopting a more comprehensive SEMS approach as set forth in API RP 75. The MMS encourages industry to incorporate the comprehensive elements in their SEMS program.

In addition to industry complying with the 4 elements and electing to model their SEMS program after a comprehensive SEMS program such as API RP 75, lessees and operators are also encouraged to consider implementing the International Organization of Standardization (ISO) 9001, *Quality Management Systems—Requirements*; and ISO 14001, *Environmental Management Systems—Requirements.*

This proposed rule would require lessees and operators to have their SEMS program audited at least once every 3 years by either an independent third party or by qualified personnel designated within the company. A knowledgeable and experienced auditor would audit the SEMS program to determine if an OCS lessee and operator is complying with the SEMS plan. These audits would be conducted in an office environment and/or in the field, and cover both a broad range of activities or be focused on a particular area (*e.g.*, records, gas compressors, blowout preventers, or documentation) as appropriate. Auditors must meet the qualifications as proposed in this rule.

The MMS may, at our discretion, evaluate independent third parties, meet with lessees and operators to periodically review the results of SEMS program audits, and conduct announced or unannounced evaluations with MMS personnel and/or independent third parties to determine SEMS plan compliance and effectiveness. The MMS would be more inclined to conduct a SEMS evaluation on an operator that has a history of poor performance. Poor performance may be based on the number and/or type of incidents of non-compliance, civil or criminal penalties, injuries, fatalities, accidents, fires, losses of well control, explosions, collisions, pollution incidents, and/or damage to the marine environment. Lessees and operators would be responsible for all costs associated with any independent third party evaluation of their SEMS plan.

In this proposed rule, MMS would require operators, on an annual basis, to submit the number of hours worked for all company and contract employees (people on the facility) during production, drilling, pipeline, and construction activities (which includes the adding or removing of equipment and/or facility modifications). This information is submitted on Form

MMS–131 on an annual basis. We use the ''hours worked'' information to calculate Occupational Safety and Health Administration-style safety and health indices. The MMS considers the information to be significant to help us evaluate industry's continued improvement of safety and environmental management in the OCS. Information on Form MMS–131 includes company identification, number of company/contractor injuries and/or illnesses suffered, company/contractor hours worked, EPA National Pollutant Discharge Elimination System (NPDES) permit non-compliances and oil spill volumes for spills less than 1 barrel. All pieces of information are reported as collected during one calendar year. We use the information obtained from this form to develop industry average incident rates that help to describe how well the offshore oil and gas industry is performing. Using the produced data allows MMS to better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations.

Additionally, operators can use the data to make individual comparisons and evaluate trends. Knowing how the offshore industry as a whole is doing, and where their own company ranks, provides company management with information to focus on safety and environmental improvement efforts. This information also provides offshore operators with a credible data source to demonstrate how industry and individual operators are performing.

The MMS does not want the SEMS program to be a paperwork exercise conducted solely to meet regulatory requirements. Such an effort would defeat the purpose of the proposed rule, which is to promote an attitude, or performance mentality, that helps to achieve operational safety and environmental protection through awareness and planning. The MMS knows that many lessee/operators have already integrated similar management programs into their operations and expects that most of the remaining operators have some type of informal or undocumented management program that addresses safety and environmental policies and procedures. The MMS understands that the development and implementation of this type of program may place an additional burden on some OCS operators, in the short-term. However, MMS believes that a SEMS program would benefit all lessees/operators in that it would identify and mitigate hazards, assure safe work practices, manage changes, and properly train offshore employees and contractors.

Comments on this proposed SEMS rule are requested. Commenters are encouraged to submit detailed comments with justifications or background information supporting their responses. In addition, we intend to conduct at least one public workshop on this proposed SEMS rule during the upcoming comment period. We will announce the time and location in a separate document.

## Procedural Matters

### *Regulatory Planning and Review (Executive Order (E.O.) 12866)*

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. The MMS estimates that it would cost OCS oil and gas lessees and operators $12,673,967 to comply with the requirements in the proposed rulemaking. This estimate includes the initial startup and development costs for lessees and operators to develop and implement the proposed four elements of a SEMS. This is a one-time cost of approximately $4,590,000. The MMS estimates that annual recurring cost of the proposed rulemaking to be approximately $8,083,967 for maintaining SEMS after implementation. Details on the estimated costs for this rulemaking are further discussed in the Regulatory Flexibility Act section. The proposed rulemaking would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues arising out of legal mandate, the President's priorities, or the principles set forth in E.O. 12866.

### *Regulatory Flexibility Act*

While the proposed rule would affect a substantial number of small entities, it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small lessees/operators that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent (91 operators) of them are considered small. This proposed rule, therefore, would affect a substantial number of small entities.

### *Assumptions*

In order to more accurately represent costs associated with implementing this rule, MMS made the following assumptions concerning the costs associated with the requirements in the proposed rulemaking.

- Because of the wide variation in company size, we have grouped operators into three classes (High, Moderate, and Low Activity).
- We have used the results of 10 years of voluntary SEMS Performance Measures reporting by OCS operators to determine that 70 of the 130 operators, at a minimum, are using SEMS. We suspect, however, that this number is higher based on previous Annual Performance Review Meetings where voluntary SEMS was a discussion topic.
- We have used actual costs from safety management system vendors to derive our estimated costs for industry.
- We assume there are no new costs for the estimated 70 operators who are currently using SEMS, as their systems have already been developed and they are expending funds to manage this process. However, we have calculated costs associated with compliance that require new work on their behalf and continued maintenance/recordkeeping activities.
- The estimated cost for the 60 remaining operators to implement, develop, and manage the SEMS program is based on the operator having an internet-based system, which has been determined to be the most common approach used by operators.
- Many operators are of such a modest size that a purchased template from a safety management system vendor would meet their needs and would comply with the proposed regulation. They would not need to spend additional money to customize a template for their use.

### *High, Moderate, and Low Activity Definitions*

Oil and gas operators in the OCS vary substantially in size and the degree in which they are engaged in extracting oil

from the OCS. Of the 130 identified operators, there is a range in OCS oil and gas activity from as little as 1 complex to nearly 500 facilities; and from as low as 15,000 barrels of oil equivalent (BOE) annual production to more than 300 million BOE annual production. Because of this tremendous variation in activity, MMS divides operators into high, moderate, and low activity for the purpose of measuring their performance. Using these same criteria (following this paragraph), we have used these size categories to estimate costs associated with developing, managing, and fulfilling reporting requirements for the proposed SEMS rule.

The criteria that categorizes an operator as a high, moderate, or low activity is as follows:

- An operator that qualifies under the high activity category would need to meet the following criteria:
- Produce at least 10 million or more BOE (MMBOE) per year.
- Operate a minimum of 1,000 in-service components or more during the year.
- An operator that qualifies under the moderate activity category would need to meet the following criteria:
- Produce at least 1 MMBOE, but less than 10 MMBOE, per year.
- Operate a minimum of 100 in-service components, but less than 1,000 in-service components during the year.
- An operator that qualifies under the low activity category would need to meet the following criteria:
- Produce less than 1 MMBOE per year.
- Operate less than 100 in-service components during the year.

*Development of SEMS Program*

After reviewing the voluntary SEMS submittals (OCS Performance Measures Data, Form MMS–131) received from 1996–2006, an average of 70 operators (54 percent = 70/130) reported having a SEMS-type program in-place. The other 60 operators (46 percent = 60/130) may not have a SEMS program in-place or may have a SEMS program but are not participating in the voluntary SEMS program.

The following table shows a breakdown by operator activity category (high, moderate, low):

| Activity category | Number of operators without SEMS | Number of operators with SEMS | Total number of operators by activity |
|---|---|---|---|
| High | 0 | 13 | 13 |
| Moderate | 12 | 29 | 41 |
| Low | 48 | 28 | 76 |
| Total | 60 | 70 | 130 |

As shown from the table, all high activity operators have a SEMS program in-place; the moderate activity shows over 70 percent are currently participating in a SEMS program; and finally, the low activity shows almost 40 percent are using a SEMS program.

Information received from consultants and vendors stated that the cost for an operator to buy a generic SEMS template is approximately $2,500. If an operator decided to modify the generic SEMS template to make it specific to their use, the cost would be an additional $10,000. As mentioned in the assumptions, many operators would not spend the additional $10,000 to customize a SEMS program for their use because it would not be necessary.

If the 60 operators without a SEMS program decided to buy a SEMS template, the cost would be $150,000 ($2,500 × 60). If all 60 operators needed to modify the generic plans for their specific OCS operations, which would be unlikely, an additional cost of $600,000 ($10,000 × 60) would be incurred to perform these modifications. The total for all 60 operators to buy a template and then modify the template to their philosophy is estimated at $750,000 ($150,000 + $600,000).

*SEMS Implementation*

This section provides the estimated cost for industry to implement a SEMS. The following table shows a breakdown of the average number of facilities and components for the 3 operator activity levels:

| Activity category | Average no. of components (per complex) | Average no. of complexes |
|---|---|---|
| High | 21 | 139 |
| Moderate | 15 | 29 |
| Low | 16 | 6 |

The total cost for implementing the SEMS program considers only the 60 operators that do not have a functional SEMS program. The other 70 operators are already managing their SEMS program throughout the company.

*Moderate Activity Category*

A breakdown of the cost to implement and manage a SEMS program consisting of the four elements (i.e., hazards analysis, management of change, operating procedures, and mechanical integrity) was calculated for a moderate activity operator as follows:

- A hazards analysis for a moderate activity operator at the complex level (facility risk assessment) would cost approximately $102,000 for 29 facilities. This is a one-time implementation cost. In following years, this cost would be less because the rule requires that a hazards analysis be performed for changes in the process or the equipment on a facility. We estimate that the annual cost for a moderate activity operator to update a hazards analysis for the 29 facilities would be approximately $10,000 for 3 facilities (10 percent of 29 facilities).
- The job hazard analysis at the task level includes data collection, analysis, and report development. This cost is included in the hazards analysis.
- The MOC cost is based on one change request per month and it is dependent on the complexity of the change. The MOC cost will be determined by the physical state of the

facilities, the status of technology, and the turnover of personnel. The MOC would cost approximately $20,000 per year (includes the year to implement SEMS) which also includes MOC data collection, evaluation, and documentation update.

• Based on information from consultants and vendors, a lessee/operator would need to evaluate the operating procedures of their facility each year. Also, the operating procedure cost would be determined by the maintenance of such procedures. For most operators, no formal evaluation is necessary since changes will be identified through the job hazard analysis process and managed through the MOC process. Operating procedures will cost approximately $18,000 per year (includes the year to implement SEMS) which also includes data collection, evaluation, documentation update, and recordkeeping.

• The mechanical integrity cost is based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. The cost of maintenance is not included in this assessment, only the cost of managing the program. Mechanical integrity will cost approximately $20,000 per year (includes the year to implement SEMS), which includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, salaries, maintenance and inspection reports, and recordkeeping.

• Auditing of the SEMS program is required once every 3 years and this cost would be approximately $15,000, for an average of $5,000 per year. This cost includes developing audit protocols, planning, performing audits, and recordkeeping. This is an annual cost after implementation of SEMS.

• The cost for report development, meetings, data collection, recordkeeping, and analysis would be approximately $13,000 per year. This is an annual cost after implementation of SEMS.

The estimated cost for a moderate activity operator to implement SEMS is $160,000. The estimated cost for the 12 moderate activity operators to implement SEMS is $1,920,000 ($160,000 × 12 operators). The itemized cost is:

| | |
|---|---|
| • Hazards analysis | $102,000 |
| • Management of Change | 20,000 |
| • Operating Procedures | 18,000 |
| • Mechanical Integrity | 20,000 |
| Total | $160,000 |

The estimated average cost for a moderate activity operator to maintain their SEMS program is $86,000 a year. The estimated cost for the 12 moderate activity operators to initially maintain their SEMS program is $1,032,000. The itemized cost is:

| | |
|---|---|
| • Hazards analysis | $10,000 |
| • Management of Change | 20,000 |
| • Operating Procedures | 18,000 |
| • Mechanical Integrity | 20,000 |
| • Audits | 5,000 |
| • Report development and meetings | 13,000 |
| Total | $ 86,000 |

Once all moderate operators have a SEMS program implemented, the estimated cost to maintain their SEMS program will be approximately $3,526,000 ($86,000 per operator × 41 moderate activity operators = $3,526,000).

*Low Activity Category*

A breakdown of the cost to implement and manage a SEMS program consisting of the four elements (*i.e.*, hazards analysis, management of change, operating procedures, and mechanical integrity) was calculated for a low activity operator as follows:

• A hazards analysis for a low activity operator at the complex level (facility risk assessment) would cost approximately $22,000 for 6 facilities. This is a one-time implementation cost. In following years, this cost would be less because the rule requires that a hazards analysis be performed for changes in a process or equipment on a facility. We estimate that the annual cost for a low activity operator to update a hazards analysis would be approximately $2,000 for 1 facility.

• The job hazard analysis at the task level includes data collection, analysis, report development, and recordkeeping. This cost is already included in the hazards analysis.

• The MOC cost is based on one change request per month and it is dependent on the complexity of the change. The MOC cost would be determined by the physical state of the facilities, the status of technology, and the turnover of personnel. The MOC would cost approximately $5,000 per year (includes the year to implement SEMS) which also includes MOC data collection, evaluation, documentation update, and recordkeeping.

• Based on information from consultants and vendors, a lessee/operator would need to evaluate the operating procedures of their facility each year. Also the operating procedure cost would be determined by the maintenance of such procedures. For most operators, no formal evaluation is necessary since changes will be identified through the job hazard analysis process and managed through the MOC process. Operating procedures will cost approximately $5,000 per year (includes the year to implement SEMS) which also includes data collection, evaluation, documentation update, and recordkeeping.

• The mechanical integrity cost is based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. The cost of maintenance is not included in this assessment, only the cost of managing the program. Mechanical integrity will cost approximately $8,000 per year (includes the year to implement SEMS), which also includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, maintenance, salaries, inspection reports, and recordkeeping.

• Auditing of the SEMS program is required once every 3 years and this cost would be approximately $6,000, for an average of $2,000 per year. This cost includes developing audit protocols, planning, performing audits, and recordkeeping. This is an annual cost after implementation of SEMS.

• The cost for report development, meetings, recordkeeping, and data collection and analysis would be approximately $6,000 per year. This is an annual cost after implementation of SEMS.

The estimated cost for a low activity operator to implement SEMS is $40,000. The cost for the 48 low activity operators to implement SEMS is $1,920,000 ($40,000 × 48 operators). The itemized cost is:

| | |
|---|---|
| • Hazards analysis | $ 22,000 |
| • Management of Change | 5,000 |
| • Operating Procedures | 5,000 |
| • Mechanical Integrity | 8,000 |
| Total | $40,000 |

The estimated cost for a low activity operator to maintain their SEMS program is $28,000 a year. The cost for the 48 low activity operators to maintain SEMS is $1,344,000. The itemized cost is:

| | |
|---|---|
| • Hazards analysis | $ 2,000 |
| • Management of Change | 5,000 |
| • Operating Procedures | 5,000 |
| • Mechanical Integrity | 8,000 |
| • Audits | 2,000 |
| • Report development and meetings | 6,000 |
| Total | $ 28,000 |

Once all low operators have a SEMS program implemented, the cost to maintain their SEMS program will be approximately $2,128,000 ($28,000 per operator × 76 low activity operators = $2,128,000).

*Cost to Submit to MMS*

The following are the estimated costs for complying with the proposed submittals to MMS and associated recordkeeping. The burden hours, that these costs are based on, are addressed in the Paperwork Reduction Act section.

• A letter notifying the Regional Supervisory Field Office (RSFO) when an operator plans on conducting an audit of their SEMS program in order for MMS to participate as observers would cost approximately $3,827 each year (see proposed § 250.1910). This cost is based on one-third of all 130 operators sending a notification letter each year, with an estimated burden time of 1 hour.

• A report must be sent to the RSFO within 30 days of the audit completion date, once every 3 years. The report must outline the results of the audit including deficiencies identified, a time-table or schedule for implementing corrections to deficiencies, and the person responsible for correcting each identified deficiency including their job title (see proposed § 250.1910). The annual cost would be approximately $15,308. This cost is based on one-third of the all 130 operators submitting a report each year.

• On an annual basis, Form MMS–131 (Performance Measures Data) must be submitted to MMS which would cost approximately $92,560. This cost is based on all 130 operators with an estimated time of 8 hours per response.

• The MMS would conduct evaluations of SEMS programs. We would require you to demonstrate and explain the procedures and policies in your program and produce evidence, if needed, to support your explanation which would cost approximately $4,272 a year (see proposed § 250.1913). This cost is based on conducting six evaluations a year.

The total cost for required paperwork being submitted to MMS would be approximately $115,967.

*Summary of Annual Costs to Implement and Maintain SEMS*

The total cost to implement and maintain SEMS is approximately $12,673,967. This total includes an estimated $2,314,000 for high activity operators (13) to maintain their SEMS program. We estimated the cost to maintain SEMS for the high activity operator to be $178,000 per year. This estimated cost is greater than the low and moderate activity operators because of the increased complexity of their operations. We did not discuss this cost in detail because all the high activity operators already have a SEMS program in place. A summary of all the costs are shown below.

| | |
|---|---|
| Buy/develop and implement SEMS Plan for operators without a SEMS Implementation cost | $ 750,000 |
| • High activity operator cost (already implemented) | $ -0- |
| Moderate activity operator cost ($160,000 × 12) | 1,920,000 |
| • Low activity operator cost ($40,000 × 48) | 1,920,000 |
| Total first year cost | $4,590,000 |
| Maintain SEMS (Annual Cost after Implementation). | |
| • High activity operator cost ($178,000 × 13) | $2,314,000 |
| • Moderate activity operator cost ($86,000 × 41) | 3,526,000 |
| • Low activity operator cost ($28,000 × 76) | 2,128,000 |
| Submittals required by MMS (annual cost) | 115,967 |
| Total annual costs after implementation | $8,083,967 |

*Benefits of SEMS*

The ultimate goal of SEMS is to promote safety and environmental protection in the OCS during all offshore activities. Moreover, increasing a system's level of safety leads to reduced material losses and enhanced productivity. This supports the concept that safety is good for business.

Some further benefits include:

• Logical prioritization of safety needs—SEMS emphasizes risk mitigation actions that provide the biggest impact on safety.

• More efficient maintenance scheduling and resource utilization—Effective hazard reporting in SEMS allows proactive scheduling of maintenance tasks when resources are available, increasing the likelihood that maintenance is performed on time and more efficiently.

• Compliance with legal responsibilities for safety—MMS certification requirements mandate a number of safety processes and standards that can be included in an organization's SEMS.

• Avoiding incident investigation costs and operational disruptions—Improved communication and risk mitigation will prevent many accidents from occurring.

• Reduction of the direct and indirect costs of accidents—Civil penalties, repair costs, damage claims, and increased insurance premiums are a few of the potential economic consequences of an accidental mishap.

• Establishing a marketable safety record—A record of consistently safe operations can be used to attract new business and investment.

• Continuous improvement of operational processes—SEMS allows for lessons learned to be incorporated into the system and lead to superior operations.

• Improved employee morale and productivity—Promoting communication between management and the rest of the organization prevents disenfranchisement and lifts morale.

The financial burden estimated for developing and managing a SEMS program is minor compared to the costs associated with major accidents. For example, in 1987 prior to industry having developed a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was $274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. A SEMS plan would have implemented several procedures and evaluations that may have prevented these accidents. A SEMS plan is not a guarantee of avoiding all accidents but MMS believes that a mandatory SEMS program (4 elements) will reduce the likelihood of the types of accidents and incidents discussed here and in the Preamble and will also serve to raise the safety awareness of all personnel in the office and field.

The proposed requirement for SEMS would not have a significant economic effect on a substantial number of small entities. The MMS estimates that over 40 percent of the small entities currently operating on the OCS have already implemented a SEMS program that meets the requirements under these proposed regulations. These small entities (28 low activity and 10 medium activity operators) implemented SEMS because it improved the efficiency and safety of their OCS operations. The cost for the remaining 60 percent of small entities to implement (approximately $52,500) and maintain (approximately $28,000) SEMS is very small compared to the average annual revenues they would generate ($28,000,000) from the production of oil and gas. The MMS estimated the annual revenue by multiplying the average production for a small entity (700,000 BOE) times a conservative price for a barrel of oil

($40). Therefore, this proposed rulemaking would not have a significant economic effect on a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the SBA will be investigated for appropriate action.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

**Takings Implication Assessment (E.O. 12630)**

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

**Federalism (E.O. 13132)**

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

**Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation With Indian Tribes (E.O. 13175)**

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

**Paperwork Reduction Act (PRA)**

This proposed rule contains a collection of information that has been submitted to the Office of Management and Budget (OMB) for review and approval under 44 U.S.C. 3507(d). As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, you may send your comments directly to OMB (see the **ADDRESSES** section of this notice). Please identify your comments with 1010–AD15. Send a copy of your comments to the Regulations and Standards Branch (RSB), Attn: Comments; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference *30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations*, 1010–AD15 in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA 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. The OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by July 17, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for the rule is *30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations*. Respondents are approximately 130 Federal OCS lessees, operators, and/or other independent third-parties. The MMS will use the information to: Evaluate the effect of industry's continued improvement of safety and environmental management of the OCS; develop an industry average that helps to describe how well the offshore oil and gas industry is performing; and judge the reasonableness of company requests for any specific regulatory relief. Responses to this collection are mandatory. The frequency of response varies, but is primarily annual. The information collection (IC) does not include questions of a sensitive nature. The MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR Part 2), and 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*, and 30 CFR Part 252, *OCS Oil and Gas Information Program*.

During 1997, MMS, the U.S. Coast Guard, and representatives of the OCS oil and gas industry worked together to develop a suite of consensus formulas for gauging the industry's safety and environmental performance. This resulted in the initiation of OMB approved Form MMS–131, Performance Measures Data. With this new subpart, MMS will continue to use the information collected on Form MMS–131 to calculate annually, OCS-wide, performance indices based on those consensus formulas to provide the public with information about performance trends, and allow OCS lease operators to compare their performance with industry averages. The results will be posted by MMS for use by the public.

This rule and IC request also include the hours and requirements already approved for Form MMS–131 in OMB Control Number 1010–0112, (280 hours, expiration 3/31/11). This collection is voluntary, but the rulemaking will make this and the new requirements

mandatory. The current collection under 1010–0112 will be discontinued when the final regulations become effective.

The following table details the IC burden for the proposed new requirements in subpart S.

| Citation 30 CFR 250 subpart S | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | | Non-hour cost burdens | | |
| 1900 | Develop and implement a SEMS program. (One time implementation cost of SEMS template). | $2,500 per implementation × 60 operators = $150,000. | | |
| 1900 | In-house modification (one time implementation cost) of the generic SEMS program to meet needs of specific company. | $10,000 per implementation × 60 operators = $600,000. | | |
| 1900–1915 | High Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc.), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS. | 2,000 | 13 | 26,000 |
| 1900–1915 | Moderate Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc.), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS. | 966 | 41 | 39,606 |
| | Moderate Activity Operator Implementation. (One time cost to implement SEMS). | $160,000 per moderate activity implementation × 12 operators = $1,920,000. | | |
| 1900–1915 | Low Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS. | 315 | 76 | 23,940 |
| | Low Activity Operator Implementation. (One time cost to implement SEMS). | $40,000 per low activity implementation × 48 operators = $1,920,000. | | |
| 1910 | Notify RSFO with audit schedule in timely manner. | 1 | 130 operators/once every 3 years = 43 responses. | 43 (rounded) |
| 1910 | Submit audit report, once in every 3 years, within 30 days of audit including required information; retain records for 5 years; upon request, make available to MMS. | 4 | 130 operators/once every 3 years = 43 responses. | 172 |
| 1913 | Demonstrate and explain, as required, the policies and procedures included in your SEMS program; produce supporting documentation if required. | 8 | 6 | 48 |
| 1915 | Submit Form MMS–131 | 8 | 130 | 1,040 |
| Total burden | | | 472 Responses | 90,849 Hours |
| | | | $4,590,000 Non-Hour Cost Burdens | |

The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. Other than the four non-hour cost burdens for developing the program that are listed in the burden table, we have not identified any other costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and startup cost component, and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased:

(1) Before October 1, 1995;

(2) To comply with requirements not associated with the information collection;

(3) For reasons other than to provide information or keep records for the Government; or

(4) As part of customary and usual business or private practices.

**National Environmental Policy Act of 1969**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it qualifies as a regulation of an administrative and procedural nature, in that the proposed rule only requires that industry develop a SEMS program. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

**Data Quality Act**

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

**Effects on the Energy Supply (E.O. 13211)**

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

**Clarity of This Regulation**

We are required by E.O. 12866, E.O. 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 you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Public Availability of Comments**

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.

**List of Subjects in 30 CFR 250**

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Public Lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 4, 2009.

*Assistant Secretary—Land and Minerals Management.*

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 30 CFR part 250 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 43 U.S.C. 1334.

2. In § 250.197, redesignate, in the table, paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), and add new paragraph (a)(7) to the table for Form MMS–131, Performance Measures Data, to read as follows:

**§ 250.197 Data and information to be made available to the public or for limited inspection.**

* * * * *

(a) * * *

| On form * * * | Data and information not immediately available are * * * | Excepted data will be made available * * * |
|---|---|---|
| * * | * * * | * * |
| (7) MMS–131, Performance Measures Data .... | Company Name(s); Operator Code(s); Contact Name; E-mail Address; Telephone (Number); Fax (Number). | Aggregate data collected yearly will be published one month after submission deadline; no individual company's data will be made available to the public. |
| * * | * * * | * * |

* * * * *

3. Amend § 250.198 by adding the following document to the table in paragraph (e) in alphanumerical order to read as follows:

**§ 250.198 Documents incorporated by reference.**

* * * * *

(e) * * *

| Title of documents | Incorporated by reference at |
|---|---|
| * * * * * * * | |
| API RP 75 Development of a Safety and Environmental Management Program, for Offshore Operations and Facilities, Third Edition, May 2004, Product No. G07503. | 250.1903. |
| * * * * * * * | |

4. Revise § 250.199(e)(17) to read as follows:

**§ 250.199 Paperwork Reduction Act statements-information collection.**

* * * * *

(e) * * *

| 30 CFR subpart, title and/or MMS Form (OMB Control Number) | Reasons for collecting information and how used |
|---|---|
| * * * * * * * | |
| (17) Subpart S, Safety and Environmental Management Systems (1010-xxxx), including Form MMS–131, Performance Measures Data. | The information collected is to gather the raw Performance Measures Data relating to risk and number of accidents, injuries, and oil spills during OCS activities. We use the information obtained from this form to develop an industry average that helps to describe how well the offshore oil and gas industry is performing in a safe manner. |
| * * * * * * * | |

5. Add new subpart S to read as follows:

## Subpart S—Safety and Environmental Management Systems (SEMS)

Sec.

§ 250.1900 Must I have a SEMS program?
§ 250.1901 What is the goal of my SEMS program?
§ 250.1902 When must I comply with the regulations in this subpart?
§ 250.1903 May I use an industry standard to develop my SEMS program?
§ 250.1904 What are my general responsibilities for SEMS?
§ 250.1905 What criteria for Hazards Analyses must my SEMS program meet?
§ 250.1906 What criteria for Operating Procedures must my SEMS program meet?
§ 250.1907 What criteria for Mechanical Integrity must my SEMS program meet?
§ 250.1908 What criteria for Management of Change must my SEMS program meet?
§ 250.1909 What criteria must be documented in my SEMS program for contractor selection?
§ 250.1910 What are my responsibilities when conducting a SEMS audit?
§ 250.1911 What are my documentation and recordkeeping requirements?
§ 250.1912 What qualifications must an independent third party or my designated and qualified personnel meet?
§ 250.1913 How will MMS determine if my SEMS program is effective?
§ 250.1914 What happens if MMS finds shortcomings in my SEMS program?
§ 250.1915 What are my responsibilities for submitting OCS performance measure data?

**§ 250.1900 Must I have a SEMS program?**

You must develop, implement, and maintain a SEMS program. Your SEMS program must address the following four elements:

(a) Hazards Analysis (including job hazard analysis), (b) Operating Procedures, (c) Management of Change, and (d) Mechanical Integrity.

**§ 250.1901 What is the goal of my SEMS program?**

(a) The goal of your SEMS program must be to promote safety and environmental protection in the OCS during all offshore activities.

(b) To accomplish this goal, you must ensure that your SEMS program identifies, addresses, and manages safety and environmental hazards and impacts during the design, construction, startup, operation, inspection, and maintenance of new and existing OCS facilities and DOI regulated pipelines.

**§ 250.1902 When must I comply with the regulations in this subpart?**

You must comply with the provisions of this subpart on or before [THE DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

**§ 250.1903 May I use an industry standard to develop my SEMS program?**

Your SEMS program must meet the minimum criteria outlined in this subpart and should be modeled after the requirements in:

(a) API RP 75, Development of a Safety and Environmental Management Program, for Offshore Operations and Facilities, Third Edition, May 2004 (incorporated by reference as specified in § 250.198).

(b) Other standards or guidelines (*e.g.*, ISO 9001, 14001) that meet or exceed the API RP 75 standard.

**§ 250.1904 What are my general responsibilities for SEMS?**

(a) You are responsible for the development, support, and continued improvement of your SEMS program.

(b) You must provide resources to implement and maintain your SEMS program.

(c) You must appoint a management official to serve as the operator's Management System Coordinator who will be responsible for the following:

(1) Establishing, implementing, and maintaining SEMS program procedures,
(2) Reporting to your management annually on the performance of the SEMS program and the need for improvement, and

(3) Reinforcing awareness of safety and environmental protection

requirements throughout the organization.

**§ 250.1905 What criteria for Hazards Analyses must my SEMS program meet?**

You must develop and implement a hazards analysis (facility level) and a job hazard analysis (operations/task level) for all of your facilities. For this subpart, facilities include all types of offshore structures permanently or temporarily attached to the seabed (*i.e.*, mobile offshore drilling units; floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) used for exploration, development, production, and transportation activities for oil, gas, or sulphur from areas leased in the OCS. Facilities also include DOI regulated pipelines. The purpose of both the facility level and operations/task level hazards analyses is to identify accident scenarios which could lead to worker injuries, fatalities, property damage, discharges and emissions, coastal and marine environmental impacts, or other adverse consequences. You must document and maintain current analyses for each operation covered by this section for the life of the operation at the facility. The analyses must be updated when an internal audit is conducted to assure that it is consistent with the current operations on your facility.

(a) *Hazards Analysis (facility level).* For a hazards analysis (facility level), you must perform an initial hazards analysis on each facility on or before [*THE DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE*]. The hazards analysis must be appropriate to the complexity of the operation and must identify, evaluate, and manage the hazards involved in the operation.

(1) The hazards analysis must address the following:

(i) Hazards of the operation;

(ii) Previous incidents related to the operation you are evaluating. Special attention should be given in your hazards analysis to any incident in which you were issued an Incident of Noncompliance, civil, or criminal penalty;

(iii) Control technology applicable to the operation your hazards analysis is evaluating;

(iv) A qualitative evaluation of the possible safety and health effects on employees, and potential impacts to the coastal and marine environments, which may result if the control technology fails; and

(2) The hazards analysis must be performed by a person(s) with experience in the operations being evaluated. These individuals also need to be experienced in the hazards analysis methodologies being employed.

(3) You should assure that the recommendations in the hazards analysis are resolved and that the resolution is documented.

(b) *Job Hazard Analysis (operations/task level).* Job hazard analysis (operations/task level) must be conducted for each work project and activity.

(1) You must keep a copy of the most recent job hazard analysis at the job site, and they must be readily accessible to employees.

(2) You must complete and maintain an index naming the task, the date the job hazard analysis was completed, and the date the analysis was revised.

**§ 250.1906 What criteria for Operating Procedures must my SEMS program meet?**

(a) You must develop and implement written operating procedures that provide instructions for conducting safe and environmentally sound activities involved in each operation addressed in your SEMS program. These procedures must address the following:

(1) Initial startup;

(2) Normal operations;

(3) Temporary operations;

(4) Emergency operations;

(5) Normal shutdown;

(6) Startup following a turnaround, or after an emergency shutdown;

(7) Bypassing and flagging;

(8) Safety and environmental consequences of deviating from your equipment operating limits and steps required to correct or avoid this deviation;

(9) Properties of, and hazards presented by, the chemicals used in the operations;

(10) Precautions you will take to prevent the exposure of chemicals used in your operations to personnel and the environment. The precautions must include control technology, personal protective equipment, and measures to be taken if physical contact or airborne exposure occurs;

(11) Raw materials used in your operations and the quality control procedures you used in purchasing these raw materials;

(12) Control of hazardous chemical inventory; and

(13) Coastal and marine environmental impacts identified through your hazards analysis.

(b) Operating procedures must be accessible to all employees involved in the operations.

(c) Operating procedures must be reviewed as often as necessary to assure they reflect any changes made to your operations.

(d) You must develop and implement safe and environmentally sound work practices for identified hazards during operations.

**§ 250.1907 What criteria for Mechanical Integrity must my SEMS program meet?**

You must develop and implement written procedures that provide instructions to ensure the mechanical integrity and safe operation of equipment through inspection, testing, and quality assurance. The purpose of mechanical integrity is to ensure that equipment is fit-for-service. Your mechanical integrity program must encompass all equipment and systems used to prevent or mitigate uncontrolled releases of hydrocarbons, toxic substances, or other materials that may cause environmental or safety consequences. These procedures must address the following:

(a) The design, procurement, fabrication, installation, calibration, and maintenance of your equipment and systems in accordance with the manufacturer's design and material specifications.

(b) The training of each employee involved in maintaining your equipment and systems so that your employees can implement your mechanical integrity program.

(c) The frequency of inspections and tests of your equipment and systems must be in accordance with MMS regulations and meet the manufacturer's recommendations. Inspections and tests can be performed more frequently if determined to be necessary by prior operating experience.

(d) The documentation of each inspection and test that has been performed on your equipment and systems. This documentation must identify the date of the inspection or test, the name and position, and include the signature of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection test.

(e) The correction of deficiencies associated with equipment and systems that are outside the manufacturer's recommended limits before further use.

(f) The installation of new equipment and constructing systems. The procedures must address the application for which they will be used.

(g) The modification of existing equipment and systems. The procedures must assure that they are modified for

the application for which they will be used.

(h) The verification that inspections and tests are being performed. The procedures must be appropriate to assure that equipment and systems are installed consistent with design specifications and the manufacturer's instructions.

(i) The assurance that maintenance materials, spare parts, and equipment are suitable for the applications for which they will be used.

**§ 250.1908 What criteria for Management of Change must my SEMS program meet?**

(a) You must develop and implement written management of change procedures for modifications associated with the following:

(1) Equipment,

(2) Operating procedures,

(3) Personnel changes (including contractors),

(4) Materials, and

(5) Operating conditions.

(b) Management of change procedures do not apply to situations involving replacement in kind (such as, replacement of one component by another component with the same performance capabilities).

(c) You must review all changes prior to their implementation.

(d) The following items must be included in your management of change procedures:

(1) The technical basis for the change;

(2) Impact of the change on safety, health, and the coastal and marine environments;

(3) Necessary time period to implement the change; and

(4) Management approval procedures for the change.

(e) Employees, including contractors whose job tasks will be affected by a change in the operation, must be informed of, and trained in, the change prior to startup of the process or affected part of the operation; and

(f) If a management of change results in a change in the operating procedures of your SEMS program, such changes must be documented and dated.

**§ 250.1909 What criteria must be documented in my SEMS program for contractor selection?**

Your SEMS program must document contractor selection criteria. When selecting a contractor, you must obtain and evaluate information regarding the contractor's safety and environmental performance.

(a) A contractor is anyone performing work for the lessee. However, these requirements do not apply to contractors providing domestic services to the lessee or other contractors. Domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities.

(b) You must document that your contracted employees are competent in the work practices necessary to perform their job in a safe and environmentally sound manner, and have policies and practices in place that are consistent with your SEMS program. Documentation of each contracted employee's competency to perform his/her job and a copy of the contractor's SEMS program must be kept by the operator and the contractor at the facility where the contracted operations are being performed.

**§ 250.1910 What are my responsibilities when conducting a SEMS audit?**

(a) You must perform an audit of your entire SEMS program at least once every 3 years to evaluate compliance with the requirements of this subpart, and to identify areas in which safety and environmental performance needs to be improved. You must have your SEMS program audited by either an independent third party or your designated and qualified personnel (see § 250.1912).

(b) Representatives from MMS may participate in your SEMS audit as observers. You must notify the Regional Supervisory Field Office (RSFO) at least 30 days prior to conducting your audit so that MMS may make arrangements to participate in the audit.

(c) You must submit a report to the RSFO within 30 days of the audit completion date. The report must outline the results of the audit including deficiencies identified, a timetable or schedule for implementing corrections to deficiencies, and the person responsible for correcting each identified deficiency including their job title.

(d) The MMS may verify that corrective actions have been undertaken and that these actions effectively address the audit findings. Upon request, you must make available for MMS review:

(1) Your SEMS program, including information about your contractors;

(2) The qualifications of your designated and qualified personnel or your independent third party;

(3) The SEMS report prepared by your designated and qualified personnel or your independent third party;

(4) The SEMS audits conducted of your program; and

(5) Other supporting documents or information.

(e) You must retain copies of either the independent third party's SEMS records or self audit for a period of 5 years.

**§ 250.1911 What are my documentation and recordkeeping requirements?**

(a) Your SEMS program procedures must ensure that records and documents are maintained for a period of 5 years in an effective manner. Effective document and record control includes the means of identifying, collecting, indexing, filing, storing, maintaining, and retrieving the documents and records.

(b) Records must be dated, signed, and include information on compliance with applicable legal requirements and the results of SEMS audits and reviews. Details of deficiencies, corrective and preventative actions, participation in training, permits, licenses, or other forms of legal authorization, inspection and calibration activity, and results of operational controls (maintenance, design, and manufacture) should also be included.

**§ 250.1912 What qualifications must an independent third party or my designated and qualified personnel meet?**

(a) An independent third party or designated and qualified personnel must possess the following qualifications:

(1) Previous experience with SEMS, or similar management related programs;

(2) Technical capabilities of the individual or organization for the specific project;

(3) In-house availability of or access to technology, including computer programs or hardware to be used for this specific project;

(4) Ability to perform the independent third party functions for the specific project considering current commitments;

(5) Previous experience with MMS regulatory requirements and procedures; and

(6) Procedures to avoid conflicts of interest with the SEMS program they are reviewing.

(b) You must document the qualifications for the independent third party or your designated and qualified personnel.

(c) The MMS reserves the right to evaluate independent third parties as needed.

**§ 250.1913 How will MMS determine if my SEMS program is effective?**

(a) The MMS or its authorized representative may evaluate or visit your facility to determine whether your SEMS program is in place, adequate,

and effective in protecting the safety and health of workers, the environment, and preventing incidents. These evaluations or visits may be random or based upon the OCS lease operator's or contractor's performance.

(b) The MMS or its authorized representative may evaluate your SEMS program, including documentation of contractors, independent third parties, and designated and qualified personnel, and audit reports to assess your SEMS program.

(1) You must be prepared to explain and demonstrate the procedures and policies included in your SEMS program and produce evidence to support your explanation.

(2) The MMS or its authorized representative may conduct a site visit on your facility to verify that personnel are following your SEMS program and can explain and demonstrate the procedures and policies included in your SEMS program and produce evidence to support their explanation for a specific task.

(3) If MMS directs you to do an evaluation, you will be responsible for all costs associated with the evaluation of your SEMS program.

**§ 250.1914 What happens if MMS finds shortcomings in my SEMS program?**

If MMS determines that your SEMS program is not in compliance with this subpart, we may initiate one or more of the following enforcement actions:

(a) Issue an Incident(s) of Noncompliance;

(b) Require you to revise and submit to MMS your plan to address identified deficiencies in your SEMS program;

(c) Assess civil/criminal penalties; or

(d) Initiate probationary or disqualification procedures from serving as an OCS operator.

**§ 250.1915 What are my responsibilities for submitting OCS performance measure data?**

You must submit Form MMS–131 on an annual basis, for the previous calendar year, by March 31 of each year.

[FR Doc. E9–14211 Filed 6–16–09; 8:45 am]

BILLING CODE 4310–MR–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 799

[EPA–HQ–OPPT–2007–0490; FRL–8416–8]

RIN 2070–AJ34

## Testing of Certain Nonylphenol and Nonylphenol Ethoxylate Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** On June 6, 2007, the Environmental Law and Policy Center, the Sierra Club, the Pacific Coast Federation of Fishermen's Associations, the Washington Toxics Coalition, Physicians for Social Responsibility, and UNITE HERE (hereinafter ''petitioners''), petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to initiate rulemaking proceedings under section 4 and section 6 of TSCA for the substances nonylphenol (NP) and nonylphenol ethoxylates (NPEs). EPA granted the petitioners' request for chronic aquatic toxicity testing and a few other aspects of the petitioners' TSCA section 4 request, but denied all of the petitioners' section 6 requests. Subsequently, on October 24, 2007, the petitioners filed suit in the U.S. District Court for the Northern District of California challenging EPA's denial of their TSCA section 21 petition. The lawsuit was mediated and, in an agreement signed on December 30, 2008, the parties settled the case. EPA is now providing this advance notice of proposed rulemaking (ANPRM) for aquatic and sediment toxicity testing under TSCA section 4 for these substances, and is also requesting comment on gathering data under TSCA and through other means to facilitate the evaluation of industrial laundry worker exposure to NPEs.

**DATES:** Comments must be received on or before September 15, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0490, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–0490. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0490. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301

Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8173; e-mail address: *ccd.citb@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be interested in this action if you manufacture (defined by statute to include import) or process NP or NPEs. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (including importers) (NAICS codes 325, 32411, e.g., chemical manufacturing and petroleum refineries) of one or more of the subject chemicals.
- Surface active agent manufacturers (NAICS code 325613).
- Industrial launderers (NAICS code 81233).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.B. and Unit II.D.1. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What is the Purpose and Background of this ANPRM?*

EPA is publishing this ANPRM as a follow-up to its response to certain TSCA section 4 test rule development requests made to EPA by the petitioners under TSCA section 21. Under TSCA section 21, any person may petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or an order under TSCA sections 5(e) or 6(b)(2). In the petition filed under TSCA section 21 in June 2007, the petitioners' requested that EPA require manufacturers and importers to conduct certain health and safety studies under TSCA section 4, and also requested certain TSCA section 6(a) actions for NP and NPEs (Ref. 1).

In its response to the TSCA section 21 petition (Ref. 2), EPA agreed that there may be a need for aquatic chronic toxicity testing for the short-chain NPEs. However, as EPA noted in its response, the particulars of a proposed testing program to evaluate aquatic toxicity of NPEs are uncertain, including which, and how many test chemicals and test species to include. In regard to an additional TSCA section 4 request, EPA denied that epidemiological testing is necessary, but did conclude that there may be a need for data to determine exposure to industrial laundry workers. However, EPA believes that additional information is needed to resolve:

1. Whether an exposure study (or studies) of industrial laundry workers' exposure to NPEs is warranted, and if so,

2. What kind of exposure study(ies) should be performed.

The TSCA section 21 petition and EPA's response, described in a **Federal Register** document that published on September 5, 2007, are available in the docket for this action (Refs. 1 and 2).

On October 24, 2007, the petitioners filed suit in the U.S. District Court for the Northern District of California (Ref. 56) challenging EPA's denial of the requests in the TSCA section 21 petition. This lawsuit was mediated and, in an agreement signed on December 30, 2008, the parties settled the case (Ref. 57). As part of the settlement, the parties agreed to ask the Court to dismiss the case with prejudice within 10 days of the publication of this ANPRM. Copies of the original filing and the final settlement agreement are available in the docket for this action (Refs. 56 and 57).

The purpose of this ANPRM is to solicit public input and obtain additional information relevant to whether and what kind of testing to propose concerning aquatic toxicity testing of NP and NPEs, and also to solicit comment relevant to establishing the necessity for, and the type of studies useful to, determining exposure of industrial laundry workers to NPEs. EPA is also soliciting comment on the cost of the proposed testing and the

capacity of laboratories to conduct the testing.

*B. What are the Chemical Substances of Concern to EPA in this ANPRM?*

The chemicals of concern in this ANPRM are NPEs, especially the short-chain NPEs, and NP. NP has little direct use itself, but is used as an intermediate to produce other chemicals, especially long-chain NPEs (Ref. 3). NPEs are manufactured by combining NP with ethylene oxide in an iterative process forming a mixture of NPEs of various chain lengths of 4 to 80 ethoxylate (EO) groups (e.g., NP4EO to NP80EO) (Refs. 3 and 4). Commercially, the commonly used NPEs have chain lengths of 8 to 12 EO groups (Ref. 5). Commercial mixtures of NPEs may contain a mixture of NPEs of various chain lengths; and NPEs may occur in either straight, or, more typically, branched forms. Different chain lengths have different properties and determine the particular industrial application and uses of the NPE substances. Common uses of NPEs include such consumer products as laundry detergents, shampoos, household cleaners and latex paints. Industrial uses include their use as surfactants, detergents, wetting agents and defoamers, among other uses (Refs. 3, 4, 6, and 7).

*C. What Testing is EPA Considering in this ANPRM?*

As described in this ANPRM, the testing EPA is considering is focused on aquatic toxicity testing for the short-chain NPEs, i.e., NP with one or two EO groups attached (NP1EO and NP2EO) and NP. As discussed in more detail in this unit, NP1EO, NP2EO, and NP occur in the environment mainly as degradation products of the longer-chain NPEs. In its response to the petitioners, EPA agreed that data concerning the toxic effects of the short-chain NPEs appear to be limited for aquatic organisms. In addition, for NP and short-chain NPEs, EPA concluded that there may be insufficient data to evaluate the effects of these substances on sediment-dwelling organisms. Data that are available indicate that these substances are highly toxic to fish and invertebrates, causing lethality on an acute basis and effects on growth, reproduction, and survival with low-level chronic exposures (Refs. 31 and 32). While data exist that are indicative of these effects, for the short-chain NPEs, and also for sediment-dwelling organisms, data may be insufficient for EPA to adequately evaluate the risk to aquatic and sediment-dwelling organisms from exposures to NP and short-chain NPEs. EPA also recognizes that at least part of the toxic mode of action for these substances may include disruption of the organism's endocrine system. For purposes of risk assessment, the testing EPA is considering in this ANPRM may adequately account for these effects. However, as additional data and test methods become available, EPA may propose testing protocols to better address endocrine disruption effects specifically.

NPEs and NP as a class of compounds are considered to be inherently, though not readily, biodegradable and, compared to some other surfactants, are relatively resistant to biodegradation (Refs. 4 and 6). In the environment and in wastewater treatment facilities (WWTFs), the long-chain NPEs degrade relatively quickly when compared to short-chain NPEs and NP (Refs. 8–12). Short-chain NPEs are more resistant to further degradation to NP (Ref. 13). With sufficient time NP is ultimately degraded to $CO_2$ and water (mineralization), but this process is much longer that the degradation of NPEs to NP (Refs. 3 and 13–15). As a result, although most NPEs are used and released as long-chain NPEs, concentrations of short-chain NPEs and NP are relatively high compared to the long-chain NPEs in WWTF effluent and in environmental samples (Refs. 3, 4, and 16–24).

The following studies are illustrative of sampling results for these compounds in U.S. waterways:

- A study by Rice et al. (2003) examined a 74 mile stretch of the Cuyahoga River, Ohio. They found that urbanized areas typically contain higher levels of NP and NPEs, with maximum concentrations found in water samples near WWTF discharge sites. At the sampling site closest to the Akron WWTF discharge location, 2.1 miles downstream, they found NP, NP1EO, NP2EO, and NP3EO at concentrations of 0.47, 0.60, 1.50, and 2.40 microgram/Liter (µg/L), respectively. However, the combined NP to NPE3EO concentrations in water samples at 7 additional sites along the river were much lower, with total concentrations ranging from only 0.13 to 1.0 µg/L (Ref. 22).
- Similarly, Barber et al. (2000) found detectable levels of combined NP, NP1EO, and NP2EO of 3.36 µg/L (fall samples) and 3.20 µg/L (spring samples) in the Des Plaines River, which is dominated by wastewater. However, these compounds were not detected further downstream in the Illinois River (the Des Plaines and Kankakee Rivers combine to form the Illinois R.), which receives much less WWTF effluent (Ref. 25).

More extensive surveys of NPEs in U.S. waterways have also been undertaken:

- A comprehensive monitoring study of NP and NPEs in 30 U.S. rivers sponsored by the Chemical Manufacturers Association (now the American Chemistry Council (ACC)), was designed with the stated goal of characterizing the upper range of environmental NP and NPE concentrations in U.S. rivers (Refs. 21 and 49). This study found average levels of NP(3–17)EO (combined), NP2EO, NP1EO, and NP of 2.0 µg/L, 0.10 µg/L, 0.09 µg/L, and 0.12 µg/L, respectively, in water samples. The highest levels found were approximately 15 µg/L for NP(3–17)EO and 1 µg/L for each of the other substances measured. Most of the water samples contained non-detectable levels of NP and NPEs (level of detection approximately 0.1 µg/L for NP, NP1EO and NP2EO, and 1.6 µg/L for total NP(3–17)EO) (Ref. 21).
- In another study of 139 U.S. streams in 30 states conducted by the U.S. Geological Survey, NP, NP1EO, and NP2EO were 3 of 95 organic wastewater contaminants sampled for. Samples were taken downstream of areas anticipated to contain pollution from intense urbanization and livestock production. NP was one of the most frequently detected compounds (51%). NP1EO and NP2EO were also detected, though slightly less frequently (46% and 37%, respectively). For NP, NP1EO, and NP2EO the maximum detected concentration levels were 40 µg/L, 20 µg/L, and 9 µg/L, respectively, with the median estimated concentration of each substance being about 0.8 µg/L for NP, and 1 µg/L for NP1EO and NP2EO (Ref. 18).

NP and NPEs have also been reported in sediments. Because of their significant hydrophobicity, which increases with decreasing chain length, and relative resistance to degradation, which also increases with decreasing chain length, NPEs and especially NP and the short-chain NPEs tend to preferentially partition from water and accumulate in sediments at levels much higher than those reported in water (Refs. 3, 4, 6, 26, and 27). For example, Naylor et al. (1992) found that in sediment samples NP and NP1EO predominated (average levels of 162 µg/kilogram (kg) and 18.1 µg/kg, respectively), with the highest sediment levels being about 3,000 µg/kg for NP and 175 µg/kg for NP1EO (Ref. 21). Bennett and Metcalfe (1998, 2000) found NP to be widely distributed in lower Great Lakes sediments with concentrations as high as 37,000 µg/kg in sediments near sewage treatment plants (Refs. 28 and 29). Rice et al.

(2003) measured sediment concentrations of NPEs and NP of 1,020 µg/kg dry weight in the Cuyahoga River, Ohio (Combined NP and NP(1–5)EO) (Ref. 22). Furthermore, in contrasting their observations with other published results, Rice et al. (2003) concluded that sediment levels of NPEs in the Cuyahoga River are low compared to some other areas; they noted, for example much higher levels were reported for the Detroit, Rouge, and Chicago Rivers (e.g., maximum reported levels of NP and/or NPEs from 49,000 to 60,000 µg/kg). In a marine/estuarine environment (Bernard Bayou, Mississippi), sediment concentrations ranged from 78 to 915 µg/kg for NP (average 509 µg/kg), and 5 to 89 µg/kg for NP1EO (average 11 µg/kg) (Ref. 49).

In WWTFs the degradation process of NPEs may vary depending on the efficiency of the WWTF and even according to the season of the year. However, even in cases where biodegradation of the long-chain NPEs is slowed (e.g., in winter or where wastewater treatment is poor), studies indicate that NP and the short-chain NPEs are still the predominant substances found after treatment (Refs. 3, 9, and 30).

*D. What are the Issues for Comment Concerning Aquatic Toxicity Testing?*

EPA has identified a number of issues, on which it is specifically soliciting comment in regard to proposing aquatic toxicity testing for NP and NPEs. However, this is not intended as an exclusive list of issues and commenters are encouraged to provide comments on any issue pertaining to the aquatic toxicity of NP and NPE short-chain isomers, and the testing that may be necessary or appropriate. The issues on which EPA is specifically soliciting comments are:

- Selection of test substance identity and purity;
- Selection of extent of acute and chronic aquatic tests and test species;
- Selection of particular aquatic toxicity tests and test species for NPEs;
- Testing of NP in a saltwater fish species;
- Testing of NP and NPEs in freshwater and marine sediment; and
- Proposed testing for NP1EO and NP2EO as it relates to development of water quality criteria.

In the discussions in this unit, EPA indicates its preliminary considerations regarding these issues:

1. *Selection of test substance identity and purity*. Currently, the aquatic toxicity testing EPA is considering would focus on testing NP and the short-chain NPEs, i.e., nonylphenol with one or two ethoxylates groups attached. EPA is soliciting comment on the most appropriate selection and purity of NP and NPEs to test. At this time, considering presently available data on NP and NPEs, EPA believes that testing of NP (phenol, 4-nonyl-branched: CAS number 84852–15–3) and NP1EO and/or NP2EO of 95% purity (laboratory grade) is appropriate for purposes of sufficiently predicting environmental risks from NP and NPEs as a chemical category. As noted in Unit II.C., NP1EO, NP2EO and NP occur in the environment mainly as degradation products of the longer-chain NPEs and, because of their relative resistance to degradation compared to the longer-chain NPEs, these short-chain NPEs are commonly found in the aquatic environment (Refs. 22, 25, and 31). NPE toxicity also seems to increase with decreasing chain length (Refs. 32–34). Available toxicity studies indicate that the short-chain NPEs, for example, are about 100 times more toxic than the long-chain NPEs, and NP appears to be about 1.5 to two times more toxic than the short-chain NPEs (Refs. 3 and 35). In the environment, the alkylphenols are combinations of various isomers and congeners, including NP, which is a mix of substances in which the nonyl group may be branched or linear and which may be attached to the phenol ring ortho, meta, or para to the hydroxyl group (Ref. 4). The most predominant commercial NP substance for which EPA has developed aquatic life ambient water quality criteria is phenol, 4-nonyl-branched (CAS number 84852–15–3), but tests on NP with CAS number 25154–52–3 (phenol, nonyl) were also used in developing these criteria (Ref. 4). Determining which test substance to specify for testing is a more complex issue in regard to the short-chain ethoxylates. On the TSCA inventory, both NP1EO (CAS number 27986–36–3) and NP2EO (CAS number 27176–93–8) are described with the term ''unspecified isomer lot.'' EPA has also identified NP1EO (CAS number 104–35–8) and NP2EO (CAS number 27176–93–8) whose name and CAS numbers indicate linear forms of these substances (although the actual structure may be branched); the NP1EO so identified is not present on the TSCA inventory; the NP2EO is.

With regard to who might ultimately be responsible for testing of these substances, the approach that EPA is considering proposing is that all manufacturers and processors of NP and NPEs of any chain length would be responsible for the testing. However, EPA solicits comment on such an approach.

2. *Selection of extent of acute and chronic aquatic tests and test species*. For substances that are broadly distributed in the environment, as is the case for NP and NPEs, EPA's OPPT, in assessing hazard to substances which are considered highly toxic, and EPA's Office of Water (OW), in determining ambient water quality criteria, typically review test data for both freshwater and saltwater organisms (fish, invertebrates, and plants) in order to adequately predict aquatic toxicity to environmental species (Refs. 36–38 and 50 to 51). To further elucidate the aquatic toxicity of NP and NPEs, EPA is considering proposing a number of aquatic and sediment toxicity tests in fish, invertebrates and algae. Specific testing is discussed in more detail in this unit.

The petitioners requested testing of mixtures. EPA responded that, for purposes of evaluating the effects of mixtures of NP and NPEs, an assumption of additive toxicity was reasonable and a more pragmatic way to account for the toxicity of mixtures of these substances to aquatic organisms (Refs. 1 and 2). This is because if effects are additive, the effects of mixtures can be effectively predicted from toxicity studies done on single substances. Two recent papers have examined the issue of additive toxicity for NP and NPEs. These papers present test results for mixtures of NP and the short-chain NPEs on fathead minnows and two species of daphnids, planktonic freshwater crustaceans also known as water fleas (Refs. 52 and 53). TenEyk and Markee (2007) concluded from testing with fathead minnows (*Pimephales promelas*) and water fleas (*Ceriodaphnia dubia*) that both potential additivity and synergism (where toxicity of the mixture is greater than additive) were observed (Ref. 52). Conversely, in tests with another water flea species (*Daphnia magna*), Sun and Gu (2005) concluded that potential antagonism (where toxicity of the mixture was less than additive) was seen (Ref. 53). EPA notes that these testing results indicate the substantial difference in the conclusions regarding the type of interaction (antagonism vs. additivity vs. synergism) that can potentially occur due to any number of factors related to biology, chemistry, experimental variables, etc. However, in considering the limitations associated with the study designs, EPA notes that, in both studies, the deviations observed from a simple additivity interaction are sufficiently small (a factor of approximately two or less) as to make additivity a reasonable

assumption for any evaluation of these compounds at this time. Two–fold is well within the range of inter-laboratory variability that one might expect in the results of testing a single chemical in the same species from one laboratory to another, and is far lower than the variability observed for toxicity of the same chemical to different aquatic species, which, in the case of NP, can exceed 100–fold (Refs. 32 and 55).

Therefore, it is EPA's current view that testing of individual NP and NPE substances as EPA is considering proposing in this ANPRM, will provide sufficient information needed to evaluate the toxicity of mixtures of these substances (for example, by using a toxic equivalent factor (TEF) approach). However, EPA is soliciting comment on whether testing intended to address the potential for additive toxicity should be conducted consistent with the protocol used in the TenEyck and Markee study (Ref. 52), as suggested by the petitioners. EPA is also soliciting comment on alternative approaches to investigating the potential toxicity of mixtures of NP and the various short-chain NPEs.

3. *Selection of particular aquatic toxicity tests and test species for NPEs.* To further determine the aquatic toxicity of NPEs, EPA is considering proposing chronic testing in freshwater fish, both warm and coldwater species (e.g., fathead minnow, *Pimephales promelas*, and rainbow trout, *Oncorhynchus mykiss*); chronic testing in a freshwater invertebrate (e.g., *Daphnia magna*); and testing in freshwater algae (e.g., *Pseudokirchneriella subcapitata*; formerly *Selenastrum capricornutum*). EPA is also considering testing in a saltwater fish (e.g., sheepshead minnow, (*Cyprinodon variegatus*), chronic testing in a saltwater invertebrate (e.g., mysid shrimp, *Mysidopsis bahia*), and testing in saltwater algae (e.g., *Skeletonema costatum*)). In order to set appropriate test concentration levels, and to develop-acute-to-chronic ratios, EPA is also considering acute testing be performed by the same laboratory doing the chronic fish and invertebrate testing.

4. *Testing of NP in a saltwater fish species.* EPA has developed water quality criteria (WQC) for NP (Ref. 4). However, as EPA noted in that document, the WQC for NP (CAS number 84852–15–3) was developed without adequate chronic toxicity data for a saltwater fish species. EPA is therefore considering proposing that acute and chronic toxicity testing of NP be performed in a single laboratory in order to fill that missing chronic toxicity data need, and also to calculate an acute-to-chronic ratio. EPA is considering proposing that the sheepshead minnow be the test species for this possible testing requirement.

5. *Testing of NP and NPEs in freshwater and marine sediment.* EPA noted in its response to the NP-NPE TSCA section 21 petition that information on the toxicity of NP in sediment, in both freshwater and marine/estuarine habitats, is limited and that it would consider additional testing under TSCA section 4 to obtain needed data. EPA is considering proposing acute and chronic sediment toxicity testing in freshwater and marine species of benthic invertebrates for NP, NP1EO, and/or NP2EO, where adequate data are lacking. Specifically, EPA is considering proposing the amphipod (*Hyalella azteca*) as the freshwater test species (acute and chronic testing) (Ref. 39). EPA is also requesting, as per the discussion in Unit II.D.2., comment on whether to require section 4 testing of NPE and NP on a sediment organism, e.g., *Hyalella azteca*, in order to fill the information gaps on additive toxicity. Regarding the marine environment, EPA is considering proposing testing in two species: acute testing in a marine amphipod (*Rhepoxynius abronius*), which, besides being a purely marine species, has a large data base of toxicity testing available; and acute and chronic testing in an estuarine amphipod, (*Leptocheirus plumulosus*) (Refs. 40 and 41). EPA would consider using the results from both *Leptocheirus* and *Rhepoxynius* to estimate chronic toxicity to *Rhepoxynius*, for which a chronic toxicity test method is not available.

6. *Proposed testing for NP1EO and NP2EO as it relates to development of water quality criteria.* EPA has derived recommended ambient water quality criteria (AWQCs) only for NP (Ref. 4). An EPA-recommended AWQC is a level of a pollutant or other measurable substance in water that, when met, will protect aquatic life and/or human health. EPA publishes recommended AWQCs pursuant to Section 304(a) of the Clean Water Act, which directs EPA to publish criteria accurately reflecting the latest scientific knowledge on such factors as ''the kind and extent of all identifiable effects . . . expected from the presence of pollutants in any body of water.'' 33 U.S.C 1314(a)(1)(A). As discussed in this unit, NP is more persistent and toxic, and frequently more abundant in the environment, than NPEs. Because of its relative persistence and toxicity compared to NPEs, most research has focused on NP as a chemical substance of concern. For these same reasons, development of data for NP was considered of priority importance for derivation of AWQCs. (Development of AWQC generally involves extensive and specific test data (Refs. 4 and 38)). In this ANPRM, EPA is considering proposing more limited testing that would sufficiently characterize the toxicity of NP1EO and NP2EO to enable a reasoned assessment of risk from these substances. However, the data developed could also be useful to OW should they pursue development of NPE AWQCs.

*E. What are the Issues Concerning Exposure of NPEs to Industrial Laundry Workers?*

The petitioners requested that EPA conduct an epidemiology study of industrial laundry workers who may be exposed to NP and NPEs in detergents. As noted in EPA's response to the petition, before an epidemiology study can be effectively designed or conducted, there needs to be sufficient exposures to a substance to warrant a study of human health effects potentially attributable to those exposures. As noted in the comments submitted by the Uniform and Textile Service Association (UTSA) and the Textile Rental Services Association (TRSA), approximately 90% of industrial laundries use injected liquid detergent (Ref. 42). Given the low volatility (Ref. 43) and negligible dermal absorption of NP and NPE (Ref. 44), EPA does not expect that where liquid detergents are used these industrial laundry operations will present a significant exposure potential to workers. However, as agreed to in the Settlement Agreement (Ref. 57), EPA is soliciting comment on that conclusion in this ANPRM. Additionally, EPA is soliciting information on specific circumstances or scenarios which may result in workers being exposed. Examples included exposure scenarios resulting from spills. EPA would be interested in the extent to which those types of exposures would present risks to workers. EPA would also be interested in receiving comments on the best ways to obtain data or information on such exposures.

For the approximately 10% of industrial laundry operations and an unknown number of institutional laundry operations that may use powdered detergent, EPA believes there is potential for inhalation exposure to dust containing NP and NPE by workers and that the number of potentially exposed workers involved could be substantial (Ref. 45). As these concerns are based on estimates, not actual exposure monitoring data, they would not support a conclusion that there are sufficient exposures to warrant an

epidemiology study. However, EPA considers that obtaining additional exposure information may be warranted to reasonably assess the potential for risk associated with this exposure scenario in particular.

EPA has examined the regulatory status, as well as other studies, of various components of detergents that are used in consumer, industrial, and institutional laundry operations (Refs. 46, 47, and 48). Exposure limits for subtilisins, enzymes used in detergent formulations, have been established by the American Conference of Industrial Hygienists (ACGIH) and the National Institute for Occupational Safety and Health (NIOSH). Air monitoring to ensure the levels are maintained is recommended and personal monitoring equipment for subtilisins or other common enzyme detergents is available (Ref. 47). In addition, the Organization for Economic Co-operation and Development (OECD) Screening Information Data Set (SIDS) report on linear alkyl sulfonates, another common laundry detergent component, suggests that the hazard warnings and routine practices (protective equipment use and rinsing of residuals from contact) will sufficiently limit exposure and subsequent absorption (Ref. 48). The potential for exposure to NP based chemicals in detergents should already be mitigated by the policies in place for the other detergent components. However, based on EPA's draft engineering report (Ref. 45), EPA believes that specific monitoring for NP or NPE, using the analogous methodology for monitoring enzyme exposure, may be warranted to ensure that these routine practices are also protecting from NP exposures.

Accordingly, while EPA denied the petitioners' specific request for an epidemiology study, EPA is soliciting comment on the best means to obtain information on NP and NPE exposures of laundry workers, especially where powdered detergents are used (e.g., whether through requiring an exposure study, workplace exposure monitoring, the voluntary submission of existing monitoring data, or other means). In addition, although EPA does not believe it has evidence sufficient to support the same level of concern for liquid detergents as for powdered detergents, EPA is soliciting comment on whether and how to obtain data on specific scenarios that may result in exposure to laundry workers from liquid detergents, as well as powdered detergents.

*F. What is the Agency's Authority for Taking this Action?*

EPA is issuing this ANPRM on certain health and environmental effects testing for certain NP and NPE chemical substances under TSCA section 4(a) (15 U.S.C. 2603(a)).

Section 2(b)(1) of TSCA (15 U.S.C. 2601(b)) states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statue to include import] and those who process such chemical substances and mixtures[.]'' To implement this policy, TSCA section 4(a) provides that EPA shall require by rule that manufacturers and processors of chemical substances and mixtures conduct testing if the Administrator finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture of any combination of such activities on health or the environment can reasonable be determined or predicted, and

(iii) testing of such substances or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonable be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture[.]
(15 U.S.C. 2603(a))

If EPA makes these findings for a chemical substance or mixture, the Administrator shall require that testing be conducted on that chemical substance or mixture. The purpose of the testing would be to develop data about the substance's or mixture's health and environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment. (15 U.S.C. 2603(a))

Once the Administrator has made the relevant findings under TSCA section 4(a), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A) or (B) findings as long as EPA also finds that there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and that testing is necessary to develop such data. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy published in the **Federal Register** issue of May 14, 1993 (58 FR 28736, 28738–28739) (B Policy).

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## IV. Do Any Statutory and Executive Order Reviews Apply to This Action?

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this is a ''significant regulatory action'' because the initiation of a new rulemaking proceeding may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

Because this action does not propose or impose any requirements, other statutory and Executive Order reviews that apply to rulemaking do not apply. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of

the following: The potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note); environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19985, April 23, 1997); or human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency will consider such comments during the development of any subsequent rulemaking.

**List of Subjects in 40 CFR Part 799**

Environmental protection, Chemicals, Hazardous substances, Nonylphenol, Nonylphenol ethoxylates, Reports and recordkeeping requirements.

Dated: June 10, 2009.

**James Jones,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E9–14250 Filed 6–16–09; 8:45 am]

BILLING CODE 6560–50–S

# Notices

Federal Register
Vol. 74, No. 115
Wednesday, June 17, 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

### Rural Housing Service

### Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2009

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** In notice document Z9–10645 beginning on page 26365 in the issue of Tuesday June 2, 2009, make the following corrections:

In the second and third column, the list of State Offices, addresses, telephone numbers, and contact persons is reprinted to read as set forth below:

Florida & Virgin Islands State Office, 4440 NW. 25th Place, Gainesville, Florida 32606–6563, (352) 338–3465, TDD (352) 338–3499, Tresca Clemmons.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, Michigan 48823, (517) 324–5199, TDD (517) 337–6795, Ghulam Sumbal.

New Mexico State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, New Mexico 87109, (505) 761–4944, TDD (505) 761–4938, Susan Guana.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Edwards-Jackson, Finance and Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service) or via e-mail at *Bonnie.Edwards@wdc.usda.gov*.

Dated: June 10, 2009.

**Tammye Trevino,**

*Administrator, Rural Housing Service.*

[FR Doc. E9–14259 Filed 6–16–09; 8:45 am]

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday, June 17, 2009 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

**DATES:** June 17, 2009.

**ADDRESSES:** Forest Supervisor's Office, 31374 U.S. Hwy 2, Libby, Montana.

**FOR FURTHER INFORMATION CONTACT:** Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *jturk@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda will include a vote on all 2009 project proposals from the Rexford, Fortine, Three Rivers, and Libby Ranger Districts and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: June 9, 2009.

**Paul Bradford,**

*Forest Supervisor.*

[FR Doc. E9–14078 Filed 6–16–09; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Encryption Items Under the Jurisdiction of the Department of Commerce

**AGENCY:** Bureau of Industry and Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 17, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This collection of information is required by Section 742.15 of the Export Administration Regulations (EAR). This collection facilitates the review of encryption products to determine eligibility for mass market status.

#### II. Method of Collection

Submitted electronically or in paper form.

#### III. Data

*OMB Control Number:* 0694–0104.
*Form Number(s):* None.
*Type of Review:* Regular submission.
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 680.
*Estimated Time per Response:* 5 minutes to 7 hours per response.
*Estimated Total Annual Burden Hours:* 4,507.
*Estimated Total Annual Cost to Public:* $0.

#### IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 11, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–14183 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Export License Services—Transfer of License Ownership, Request for a Duplicate License

**AGENCY:** Bureau of Industry and Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 17, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This collection is needed to provide services to exporters who have either lost their original license and require a duplicate, or who wish to transfer their ownership of an approved license to another party.

#### II. Method of Collection

Submitted in paper form.

#### III. Data

*OMB Control Number:* 0694–0126.

*Form Number(s):* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time per Response:* 16 to 66 minutes per response.

*Estimated Total Annual Burden Hours:* 38 hours.

*Estimated Total Annual Cost to Public:* $0.

#### IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 11, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–14184 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–816]**

### Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Rescission of Antidumping Duty Administrative Review, In Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 30, 2008, the Department of Commerce (the Department) published the notice of initiation of this antidumping duty administrative review with respect to seven companies, including Dongkuk Industries Co., Ltd. (Dongkuk). Dongkuk submitted a letter to the Department stating that it had no shipments of subject merchandise to the U.S. during the period of review (POR), which was corroborated by the Department. On April 14, 2009, we published the notice of preliminary rescission of this antidumping duty administrative review with respect to Dongkuk, and invited interested parties to comment. *See Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Intent to Rescind Antidumping Duty Administrative Review, In Part*, 74 FR 17159 (April 14, 2009) (*Preliminary Rescision*). We received no comments, and have determined that the review of Dongkuk should be rescinded. This review will remain in effect for all other companies initiated upon.

**EFFECTIVE DATE:** June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett, 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) 482–4161.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 30, 2008, we published the *Notice of Initiation* of this antidumping duty administrative review with respect to Dongbu Steel Co., Ltd., Dongkuk, Haewon MSC Co., Ltd., Hyundai HYSCO, LG Chem, Ltd., Pohang Iron and Steel Co., Ltd./Pohang Coated Steel Co., Ltd., and Union Steel Manufacturing Co., Ltd., for the period August 1, 2007, through July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795 (September 30, 2008) (*Notice of Initiation*). On October 20, 2008, Dongkuk submitted a letter certifying that it had no sales of subject merchandise to the United States during the POR. *See* Letter from Dongkuk to the Secretary of Commerce, dated October 20, 2008. The Department used entry data placed on the record of the instant review for selection of respondents to corroborate Dongkuk's claim. See memorandum from Joy Zhang, International Trade Compliance Analyst, through James Terpstra, Program Manager, Office 3 AD/CVD Operations, and Melissa Skinner, Office Director, Office 3, AD/CVD Operations, to the File, dated October 2, 2008 (CBP Data). On December 9, 2008, the Department requested the U.S. entry documents from U.S. Customs and Border Protection for clarification of

several entries. *See* memorandum from Melissa Skinner, Office Director, Office 3, AD/CVD Operations, to David M. Genovese, Director, AD/CVD/Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, dated December 9, 2008 (Entry Documentation Request). On January 26, 2009, the Department received the requested entry documentation. See memorandum from Tom Futtner, Customs Unit, to Melissa Skinner, dated January 2, 2009 (Entry Documentation). On March 27, 2009, the Department determined that Dongkuk's claim of no shipments was corroborated using the entry documentation. *See* memorandum from Christopher Hargett, International Trade Compliance Analyst, Office 3, through James Terpstra, Program Manager, Office 3, to Melissa Skinner, Office Director, Office 3, Import Administration, dated March 27, 2009. On April 14, we published the *Preliminary Rescission* with respect to Dongkuk, and invited interested parties to comment. *See Preliminary Rescission*, at 17160. A complete description of the order on corrosion–resistant carbon steel flat products from Korea is contained in the *Preliminary Rescission*. We received no comments.

**Partial Rescission of Review**

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise by that producer. Dongkuk submitted a letter on October 20, 2008, certifying that it did not have sales of subject merchandise to the United States during the POR. The petitioners, United States Steel Corporation, Nucor Corporation, and Mittal Steel USA ISG, Inc., did not comment on Dongkuk's no–shipment claim.

As noted, we conducted an internal customs data query on October 2, 2008, as part of the selection of respondents for individual review. *See* CBP Data. The data query showed several questionable entries, of which the Department requested entry documents. *See* Entry Documentation Request. The documentation showed that the questionable entries from the CBP data were not produced by Dongkuk. *See* Entry Documentation.

Based on our analysis of the shipment data, Dongkuk is a non–shipper for this review. *See* No Shipment Analysis. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to Dongkuk. *See, e.g., Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965, 48966 (August 10, 2000).

**Administrative Protective Order**

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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. We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 11, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–14243 Filed 6–16–09; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–838]**

### Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 17, 2009

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 4, 2009, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period of review (POR) February 1, 2008, through January 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 6013 (February 4, 2009). The Department received a timely request from the Ad Hoc Shrimp Trade Action Committee (Domestic Producers) in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil. On April 7, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to 43 companies. *See Certain Frozen Warmwater Shrimp from Brazil, India and Thailand: Notice of Initiation of Administrative Reviews*, 74 FR 15699 (April 7, 2009) (*Initiation Notice*).

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents. *See Initiation Notice*. However, our review of the CBP database showed no entries of certain frozen warmwater shrimp originating in Brazil, subject to AD/CVD duties, during the period February 1, 2008, to January 31, 2009. *See* April 9, 2009, Memorandum to the File from Kate Johnson entitled ''Release of POR Entry Data from CBP.'' We released the results of our CBP data query to interested parties and invited them to comment on the CBP data and respondent selection. On May 1, 2009, the Domestic Producers submitted comments, which we addressed in the June 10, 2009, Memorandum to James Maeder, Director, Office 2, AD/CVD Operations from Kate Johnson and Rebecca Trainor, Senior Case Analysts, Office 2, AD/CVD Operations, entitled ''Intent to Rescind Administrative Review.''

On May 8, 2009, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of frozen warmwater shrimp from Brazil during the POR. We received no information from CBP to contradict the results of our data query that there were no shipments or entries of subject merchandise to the United States during the POR.

**Rescission of Review**

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review if there were no entries, exports, or sales of the subject merchandise during the POR. As there

were no entries, exports, or sales of the subject merchandise during the POR, we are rescinding this review of the antidumping duty order on certain frozen warmwater shrimp from Brazil pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 10, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–14244 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice, *Ex Parte* Clarification.

**SUMMARY:** On April 24, 2009, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** on the Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System (Docket No. 090420688–968–01). This Notice provides clarification regarding *ex parte* procedures associated with this public comment process, specifically as it relates to members of Congress, their staff, foreign government officials and officials of intergovernmental organizations.

**ADDRESSES:** U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Fiona M. Alexander (202) 482–1866 or falexander@ntia.doc.gov.

**SUPPLEMENTARY INFORMATION:** On April 24, 2009, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** seeking comment regarding the upcoming expiration of the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN). 74 Fed. Reg. 18,688 (April 24, 2009). This agreement has been in existence since November 25, 1998, and is scheduled to expire on September 30, 2009.

As stated in the Notice, any oral presentation to NTIA regarding the substance of this proceeding will be considered an *ex parte* presentation, and the substance of the discussion will be placed on the public record and become a part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to NTIA, which summarizes the substance of the communication. Any written presentations provided in support of the oral communication or meeting also will be placed on the public record and become a part of this docket.

Meetings and other interactions with members of Congress, their staff, foreign governmental officials or with officials of intergovernmental organizations regarding matters within the scope of this proceeding (including the expiration of the JPA) shall not be considered *ex parte* communications, which trigger the reporting requirements set forth above. The issues that are the subject of this proceeding, by their nature, require extensive consultation with foreign government officials/staff and officials/staff of intergovernmental organizations, as well as with officials and staff from other Federal agencies, Congress, and the Executive Office of the President. The clarification set forth above accords communications with members of Congress, their staff, foreign governmental officials and officials of intergovernmental organizations the same treatment for *ex parte* purposes as is accorded communications with officials or staff from any Federal Government agency or the Executive Office of the President.

Dated: June 11, 2009.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. E9–14201 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–60–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XP81**

### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** NOAA's National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

**ACTION:** Notice of receipt of a permit application; request for comments.

**SUMMARY:** Notice is hereby given that NMFS has received an application for a permit to conduct research for scientific purposes from Thomas R. Payne and Associates (TRPA) in Arcata, California. The requested permit would affect the endangered Southern California Coast Distinct Population Segment of steelhead (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NMFS either approves or disapproves the application.

**DATES:** Written comments on the permit application must be received at the appropriate address or fax number July 17, 2009.

**ADDRESSES:** Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be sent using email (*FRNpermits.lb@noaa.gov*) or fax (562–980–4027). The permit application is available for review, by appointment, at the foregoing address and is also available for review online at the Authorizations and Permits for Protected Species website at *https://apps.nmfs.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Matt McGoogan at phone number (562–980–4026) or e-mail: *matthew.mcgoogan@noaa.gov*

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a

hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

**Permit Application Received**

TRPA has applied for a scientific research permit to conduct a study with endangered Southern California (SC) Distinct Population Segment (DPS) steelhead (Oncorhynchus mykiss) in the Ventura River. The purpose of this study is to use monitoring and sampling methods to gather information that will contribute to the understanding of abundance and distribution of juvenile steelhead in various portions of the Ventura River watershed. Information obtained by this study is anticipated to help support restoration efforts for the SC DPS. For this study, snorkel surveys will be used to the greatest extent possible for assessing steelhead abundance within stream habitats. Electrofishing will also be used as a sampling method to calibrate fish counts obtained from snorkel surveys and provide estimates of steelhead abundance in selected run and riffle habitat types. Electrofishing will be conducted only by qualified individuals and according to NMFS' electrofishing guidelines. The proposal specifies a 5–year study starting in 2009 and ending in 2014. Field activities for this study would occur between March 1st and September 30th during each year of the study. TRPA has requested an annual non-lethal take of up to 600 juvenile steelhead. The unintentional lethal take that may occur as a result of project activities is up to 30 juvenile steelhead. See the permit application for a complete project description including tables and figures.

Dated: June 12, 2009.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–14264 Filed 6–16–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XP80**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice; availability of fishery plan and request for comment.

**SUMMARY:** Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fishery Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Oregon Coast (OC) coho salmon under the Endangered Species Act (ESA). The FMEP specifies the future management of freshwater inland recreational fisheries potentially affecting coho salmon on the Oregon coast. This document serves to notify the public of the availability of the FMEP for review and comment before final approval or disapproval is made by NMFS.

**DATES:** Comments on the FMEP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on July 17, 2009.

**ADDRESSES:** Written comments on the application should be addressed to the NMFS Salmon Recovery Division, 2900 NW Stewart Parkway, Roseburg, OR 97471, or faxed to 541–957–3386. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *CohoFisheryPlan.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: *Comments on Oregon's coho FMEP*.

**FOR FURTHER INFORMATION CONTACT:** Lance Kruzic, Roseburg, Oregon, at phone number: (541) 957–3381, or e-mail: *lance.kruzic@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Species Covered in This Notice**

This notice is relevant to the Oregon Coast Coho Salmon (*Oncorhynchus kisutch*) evolutionarily significant unit (ESU).

ODFW has submitted to NMFS an FMEP entitled ''Oregon Coastal Coho, Coastal Rivers Coho Sports Fishery.'' This FMEP describes management of recreational fisheries for adult coho salmon in the bays and rivers within the OC Coho Salmon ESU. The objective of the fishery management described in this FMEP is to harvest unmarked coho salmon in a manner that does not exceed the harvest impact limits prescribed in the overarching harvest management plan for both ocean and freshwater fisheries that has already been approved under the ESA (i.e., the Pacific Fishery Management Council's Amendment 13 to the Pacific Salmon Plan). The impact levels on ESA-listed OC coho salmon are specified in the Amendment 13 harvest plan that has been implemented successfully since 1998. The proposed FMEP does not change in any way the existing Amendment 13 harvest plan for OC coho salmon, but could allow for additional freshwater harvest of coho salmon if specific conditions are met and the fishery impacts are still within the limits prescribed in Amendment 13. Population viability analyses and risk assessments conducted since this harvest management plan went into effect indicate the extinction risk for listed OC coho salmon would not increase as a result of the fishery impact levels. A variety of monitoring and evaluation tasks are specified in the FMEPs to assess the abundance of coho salmon, determine fishery effort and catch of coho salmon, and monitor angler compliance. A review of compliance within the provisions of the FMEP will be conducted by ODFW annually. Each year's upcoming recreational fishery management intentions will have to get NMFS concurrence beforehand to ensure compliance with the proposed FMEP.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) and updated June 28, 2005 (70 FR 37160), NMFS may approve an FMEP if it meets criteria set forth in 50 CFR 223.203(b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

**Authority**

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, July 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, July 28, 2005).

Dated: June 12, 2009.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–14267 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 080626787–8788–01]**

**RIN 0648–XP54**

### 2009 Monkfish Research Set-Aside Program

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

**ACTION:** Notice; reallocation of set-aside days-at-sea.

**SUMMARY:** NMFS notifies the public of the reallocation of monkfish research days-at-sea (DAS) as exempted DAS. These are DAS that were set aside under the 2009 Monkfish Research Set-Aside (RSA) Program, but were not distributed through the NOAA grant process. These exempted DAS may be used for the conduct of monkfish related research activities during fishing year (FY) 2009 (May 1, 2009, through April 30, 2010). Requests for a monkfish DAS exemption must be submitted with a complete application for an exempted fishing permit (EFP).

**DATES:** Effective June 17, 2009 through April 30, 2010. Projects involving the use of exempted DAS, under this program, must be completed on or before April 30, 2010.

**ADDRESSES:** Applications for an EFP must be sent to the Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Allison McHale, Fishery Policy Analyst, by phone 978–281–9103 or by fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

Amendment 2 to the Monkfish Fishery Management Plan (FMP) (70 FR 21927, April 28, 2005) established the Monkfish RSA Program, which annually sets aside 500 monkfish DAS from the total number of monkfish DAS allocated to limited access monkfish vessels to be used for cooperative monkfish research programs. Amendment 2 also established a Monkfish Exemption Program, which requires the Regional Administrator (RA) to reallocate as exempted DAS any monkfish research DAS not allocated through the Monkfish RSA Program. These exempted DAS may be then used by vessels for the conduct of monkfish research activities during the current fishing year (e.g., FY 2009).

On July 11, 2008, NMFS published a notice in the **Federal Register** announcing the 2009 Monkfish RSA Program (73 FR 40052), and solicited proposals for monkfish research activities to be conducted under this RSA program. Five proposals were received as part of this solicitation, and three were granted awards totaling 449 monkfish research DAS. As a result, there are 51 DAS available to be reallocated as exempted DAS during FY 2009. Therefore, the RA, pursuant to the regulations governing the monkfish fishery at 50 CFR 648.92(c)(1)(v), reallocates these unused research DAS from the FY 2009 Monkfish RSA Program, as exempted DAS, that may be used for the conduct of monkfish research projects during FY 2009.

All requests for monkfish DAS exemptions under the Monkfish DAS Exemption Program must be submitted to the RA along with a complete application for an EFP. The requirements for submitting a complete EFP application are provided in the regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act at § 600.745(b).

### Classification

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

Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest because the action is administrative in nature, and because it provides the public (i.e., researchers) the opportunity to reduce costs associated with conducting monkfish related research activities. Additionally, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date because the action is administrative in nature.

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

Dated: June 11, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9–14263 Filed 6–16–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM35**

### New Conservation and Management Measures and Resolutions for Antarctic Marine Living Resources Under the Auspices of CCAMLR

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

**ACTION:** Final notice.

**SUMMARY:** NMFS notifies the public that the United States has accepted conservation and management measures and resolutions pertaining to fishing in Antarctic waters managed by the Commission for the Conservation of Antarctic Marine Living Resources (Commission or CCAMLR). The Commission adopted these measures at its twenty-seventh meeting in Hobart, Tasmania, October 27 to November 7, 2008. The measures have been agreed upon by the Member countries of CCAMLR, including the United States, in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention). The measures include: measures previously adopted by the Commission and remaining in force; measures adopted for the 2008/2009 fishing season to restrict overall catches, research catch and bycatch of certain species of finfish, squid, krill and crabs; restrict fishing in certain areas; restrict use of certain fishing gear; specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties; promote compliance with CCAMLR measures by non-Contracting Party vessels; and require vessels engaged in bottom fishing to report data on benthic organisms recovered by their gear. This notice includes a summary of the 22 new measures adopted at the twenty-seventh meeting of CCAMLR. The full text of all measures adopted by CCAMLR can be found on CCAMLR's Web site—*www.ccamlr.org.*

**DATES:** These measures are effective on June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert Gorrell, Office of Sustainable Fisheries, Room 13463, 1315 East-West Highway, SSMC3, NMFS, Silver Spring, MD 20910; tel: 301–713–2341; fax 301–713–1193; e-mail *Robert.Gorrell@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 50 CFR 300.111, NMFS and the U.S. Department of State (DOS) published in the **Federal Register** on February 12, 2009 (74 FR 7110) the full text of the new and revised conservation and management measures adopted by CCAMLR at its 2008 meeting. NMFS did not publish those conservation and management measures that were adopted at a previous CCAMLR meeting and that did not change.

NMFS invited the public to comment on these conservation measures until March 16, 2009, and NMFS received no comments.

After providing for public comment under 50 CFR 300.111, NMFS notifies the public that the United States accepts all of the conservation measures adopted at CCAMLR's twenty-seventh meeting, and considers the measures in effect with respect to the United States. For the full text of the new and revised measures adopted, *see* 74 FR 7110, February 12, 2009. NMFS provides the following summary of these 22 new conservation measures and 2 resolutions as a courtesy to the public.

**New Conservation Measures**

1. The Commission adopted a new *compliance* measure CM 10–09 (2008)—Notification system for transshipments within the Convention Area.

The Commission adopted a new measure to require Members of the Commission (Members) to notify the Secretariat of the Commission (Secretariat) of intended transshipments within the Convention Area at least 72 hours in advance. This new measure applies to new and exploratory fisheries, as well as the fisheries for *Dissostichus eleginoides* in Statistical Division 58.5.2 and Statistical Subarea 48.3, *Dissostichus* spp. in Statistical Subarea 48.4, *Champsocephalus gunnari* in Statistical Division 58.5.2 and Statistical Subarea 48.3, and crab in Statistical Subarea 48.3. Notifications of transshipment will require information on carrier vessels and products transshipped and will be made available to Members via a password-protected section of the CCAMLR Web site.

2. The Commission adopted new *general fishery matter* CM 22–07 (2008) [1 2]—Gear Regulations: Interim measure for bottom fishing activities subject to Conservation Measure 22–06 encountering potential vulnerable marine ecosystems (VMEs) in the Convention Area.

The Commission endorsed a precautionary approach for managing bottom fisheries with respect to VMEs, and implemented an interim measure to acquire additional data from fishing vessels in 2008/09 to contribute to assessments and advice on a long-term precautionary approach to avoiding significant adverse impacts on VMEs during the course of fishing.

The requirements in this new conservation measure, and general requirement in CM 22–06, apply to the exploratory fisheries for *Dissostichus* spp. (Conservation Measures 41–04, 41–05, 41–06, 41–07, 41–09, 41–10 and 41–11), as well as the exploratory fishery for crab in Statistical Subarea 48.2 (Conservation Measure 52–02). In addition to these requirements, the Commission agreed to extend its protection of benthic communities by extending the prohibition of longline fishing in depths shallower than 550 meters across all exploratory fisheries.

3. The Commission adopted new *fishery regulation* CM 32–09 (2008)—Fishing Seasons, Closed Areas and Prohibition of Fishing: Prohibition of Directed Fishing for *Dissostichus* spp. except in accordance with specific conservation measures in the 2008/09 season.

The Commission agreed to renew the prohibition of directed fishing for *Dissostichus* spp. except in accordance with specific conservation measures in the 2008/09 season. Accordingly, directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 was prohibited in the 2008/09 season.

4. The Commission adopted new *fishery regulation* CM 33–02 (2008)—By-catch Limits: Limitation of by-catch in Statistical Division 58.5.2 in the 2008/09 season.

The Commission agreed to apply the existing by-catch limits in Statistical Division 58.5.2 in the 2008/09 season.

5. The Commission adopted new *fishery regulation* CM 33–03 (2008) [1 2]—By-catch Limits: Limitation of by-catch in new and exploratory fisheries in the 2008/09 season.

The Commission agreed to carry forward the by-catch limits for exploratory fisheries, taking account of the revised catch limit for *Dissostichus* spp. in Statistical Subarea 58.4 and the consequential changes to by-catch limits in those areas, and the decoupling of the macrourid by-catch limit from the toothfish catch limit in Statistical Subarea 88.1.

6. The Commission adopted new *fishery regulation* CM 41–01 (2008) [1 2]—Toothfish: General measures for exploratory fisheries for *Dissostichus* spp. in the Convention Area in the 2008/09 season.

The Commission established a new Small-Scale Research Unit (SSRU) in Statistical Subarea 88.1 and new SSRUs in Statistical Division 58.4.3b. The Commission revised the requirements for research hauls in Statistical Subareas 48.6 and 58.4, and included guidelines for tagging skates during the Year-of-the-Skate.

The Commission agreed to require vessels participating in the exploratory fisheries for *Dissostichus* spp. to tag skates at a rate of one skate per five skates caught, up to a maximum of 500 skates per vessel. This requirement was included in all conservation measures for exploratory fisheries for *Dissostichus* spp.

7. The Commission adopted new *fishery regulation* CM 41–03 (2008)—Toothfish: Limits on the fishery for *Dissostichus* spp. in Statistical Subarea 48.4 in the 2008/09 season.

The Commission extended the fishery for *Dissostichus eleginoides* in the Northern Area of Statistical Subarea 48.4 into 2008/09, and implemented a fishery for *Dissostichus* spp., in the southern area of that subarea.

8. The Commission adopted new *fishery regulation* CM 41–04 (2008)—Toothfish: Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in 2008/09 would be limited to Japanese and Korean-flagged vessels using longline only, and that no more than one vessel per country may fish at any one time. The Commission agreed to increase the tagging rate for *Dissostichus* spp. to three fish per ton of green weight caught. Other elements regulating this fishery were carried forward.

9. The Commission adopted new *fishery regulation* CM 41–11 (2008)—Toothfish: Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.1 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.1 in 2008/09 would be limited to one (1) Japanese, five (5) Korean, four (4) New Zealand, one (1) South African, one (1) Spanish, and one (1) Uruguayan-flagged vessels using longlines only. The precautionary catch limit for *Dissostichus* spp. was reduced to 210 tons and applied as follows: (a) SSRUs A, B, D, F, H: 0 tons; (b) SSRU C: 100 tons; SSRU E: 50 tons; and SSRU G: 60 tons. The Commission also removed the research fishing provision. Other elements regulating this fishery were carried forward.

10. The Commission adopted new *fishery regulation* CM 41–05 (2008)—Toothfish: Limits on the exploratory

fishery for *Dissostichus* spp. in Statistical Division 58.4.2 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.2 in 2008/09 would be limited to one (1) Japanese, four (4) Korean, one (1) Spanish, and one (1) Uruguayan-flagged vessels using longlines only. The Commission agreed to reduce the precautionary catch limit for *Dissostichus* spp. in Statistical Division 58.4.1 to 70 tons, applied as follows: (a) SSRUs B, C, D: 0 tons; (b) SSRU A: 30 tons; and (c) SSRU E: 40 tons. Other elements regulating this fishery were carried forward.

11. The Commission adopted new *fishery regulation* CM 41–06 (2008)—Toothfish: Limits on the exploratory fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.3a in 2008/09 would be limited to one (1) Japanese-flagged vessel using longlines only. The Commission also agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 86 tons. Other elements regulating this fishery were carried forward.

12. The Commission adopted new *fishery regulation* CM 41–07 (2008)—Toothfish: limits on the exploratory fishery for *Dissostichus* spp. on Banzare Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.3b outside areas of national jurisdiction in 2008/09 would be limited to Japanese, Spanish, and Uruguayan-flagged vessels using longlines only, and that no more than one vessel per country would fish at any one time. The Commission agreed that the catch limit in SSRU B should remain at zero. Further, and to ensure that data are collected in 2008/09 to assist with assessing this stock, and to avoid concentrated fishing that may lead to depletion, the Commission agreed that SSRU A should be further subdivided into four new SSRUs. The Commission agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 120 tons, applied as follows: (a) SSRU A: 30 tons; SSRU B: 0 tons; SSRU C: 30 tons; SSRU D: 30 tons; and SSRU E: 30 tons. Other elements regulating this fishery were carried forward.

13. The Commission adopted new *fishery regulation* CM 41–09 (2008)—Toothfish: limits for *Dissostichus* spp. on the exploratory fishery in Statistical Subarea 88.1 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Subareas 88.1 in 2008/09 would be limited to two (2) Argentine, one (1) Chilean, four (4) Korean, four (4) New Zealand, three (3) Russian, one (1) South African, one (1) Spanish, three (3) UK, and two (2) Uruguayan-flagged vessels using longlines only.

The Commission retained the catch limit of 2,700 tons for *Dissostichus* spp. in Statistical Subarea 88.1, and re-allocated the catch limits in SSRUs as follows: (a) SSRU A: 0 tons; SSRUs B, C, G (northern): total of 352 tons; SSRU D: 0 tons; SSRU E: 0 tons; SSRU F: 0 tons; SSRUs H, I, K (slope): total of 1,994 tons; SSRUs J, L: 354 tons; and SSRU M: 0 tons.

The Commission set a precautionary catch limit of 135 tons for skates and rays and 430 tons for *Macrourus* spp., and limits for other species, applied as follows: (a) SSRU A: 0 tons of any species; SSRUs B, C, G: 50 tons of skates and rays, 40 tons of *Macrourus* spp., 60 tons of other species; SSRU D: 0 tons of any species; SSRU E: 0 tons of any species; SSRU F: 0 tons of any species; SSRUs H, I, K: 99 tons of skates and rays, 320 tons of *Macrourus* spp., 60 tons of other species; SSRUs J, L: 50 tons of skates and rays, 70 tons of *Macrourus* spp., 40 tons of other species; and SSRU M: 0 tons of any species. Other elements regulating this fishery were carried forward.

14. The Commission adopted new *fishery regulation* CM 41–10 (2008)—Toothfish: limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.2 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.2 in 2008/09 would be limited to two (2) Argentine, one (1) Chilean, two (2) Korean, four (4) New Zealand, three (3) Russian, one (1) South African, one (1) Spanish, three (3) UK, and two (2) Uruguayan-flagged vessels using longlines only.

The Commission agreed to remove the research fishing provision, and carry forward the precautionary catch limit for *Dissostichus* spp. of 567 tons, applied as follows: SSRU A: 0 tons; SSRU B: 0 tons; SSRUs C, D, F, G: 214 tons; and SSRU E: 353 tons.

The Commission agreed to carry forward the precautionary catch limit of 50 tons for skates and rays and 90 tons for *Macrourus* spp., and limits for other species applied as follows: (a) SSRU A: 0 tons of any species; SSRU B: 0 tons of any species; SSRUs, C, D, F, G: 50 tons of skates and rays, 34 tons of *Macrourus* spp., 80 tons of other species; SSRU E: 50 tons of skates and rays, 56 tons of *Macrourus* spp., 20 tons of other species. Other elements regulating this fishery were carried forward.

15. The Commission adopted new *fishery regulation* CM 42–01 (2008)—Icefish: Limits on the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2008/09 season.

The Commission revised the limits on the fishery for *Champsocephalus gunnari* in Sub Statistical 48.3. Other elements regulating this fishery were carried forward.

16. The Commission adopted new *fishery regulation* CM 42–02 (2008)—Icefish: Limits on the fishery for *Champsocephalus gunnari* in Statistical Subarea 58.5.2 in the 2008/09 season.

The Commission revised the limits on the fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2. Other elements regulating this fishery were carried forward.

17. The Commission adopted new *fishery regulation* CM 51–04 (2008)—Krill: General measure for exploratory fisheries for *Euphausia superba* in the Convention Area in the 2008/09 season.

*The Commission established a new general measure for exploratory fisheries for krill. This measure included, among other things:* (a) Four data collection plans for case-specific selection by Members and their flagged vessels; (b) at least one observer appointed in accordance with the CCAMLR Scheme of International Observation and, where possible, one additional observer on board throughout all fishing activities within the season; and (c) monthly reporting of fine-scale catch, effort and biological data on a haul-by-haul basis.

18. The Commission adopted new *fishery regulation* CM 51–05 (2008)—Krill: Limits on the exploratory fishery for *Euphausia superba* in Statistical Subarea 48.6 in the 2008/09 season.

The Commission agreed that the exploratory fishery for *Euphausia superba* in Statistical Subarea 48.6 in 2008/09 would be limited to one Norwegian-flagged vessel using fishing techniques listed in Annex A of CM 21–03. This was the first exploratory fishery for krill which the Commission has implemented.

The Commission set a precautionary catch limit for *Euphausia superba* of 15,000 tons, of which no more than 11,250 tons may be taken from areas within 60 nautical miles of known breeding colonies of land-based krill-dependent predators. Other requirements included: (a) Application of general mitigation measures

contained in CM 25–03, and the mandatory use of marine mammal exclusion devices on trawls; (b) at least one observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and, where possible, one additional observer on board throughout all fishing activities within the season; (c) use of the 10-day catch and effort reporting system; (d) collection of haul-by-haul catch, effort and biological data; and (e) application of general environmental protection measures in CM 26–01 and no offal discharge.

19. The Commission adopted new *fishery regulation* CM 52–01 (2008)—Crab: Limits on the fishery for crab in Statistical Subarea 48.3 in the 2008/09 season.

The Commission agreed to combine the requirements of CM 52–01 (2007) and 52–02 (2007) into a single measure for the crab fishery in Statistical Subarea 48.3. The elements of these measures were carried forward to 2008/09. The Commission also agreed to a requirement to carry at least one observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board each vessel during all fishing activities.

20. The Commission adopted new *fishery regulation* CM 52–02 (2008)—Crab: Limits on the exploratory fishery for crab in Statistical Subarea 48.2 in the 2008/09 season.

The Commission agreed that the notifications for new fisheries for crab in 2008/09 should be considered as exploratory fisheries.

The Commission agreed that the exploratory fishery for crab in Statistical Subarea 48.2 in 2008/09 would be limited to one Russian-flagged vessel using pots only. The precautionary catch limit for crab was set at 250 tons. In accordance with CM 32–03 (Prohibition of directed fishing for finfish in Statistical Subarea 48.2), the Commission required that all live finfish taken as by-catch in the exploratory fishery for crab be released with the least possible handling, and that all live *Dissostichus* spp. be tagged prior to release. A total by-catch limit of 0.5 tons was set for all dead finfish. Other requirements in this fishery included, among other things, scientific observations, a data collection plan and an experimental harvest regime.

21. The Commission adopted new *fishery regulation* CM 52–03 (2008)—Crab: Limits on the exploratory fishery for crab in Statistical Subarea 48.4 in the 2008/09 season.

The Commission agreed that the exploratory fishery for crab in Statistical Subarea 48.4 in 2008/09 would be limited to one Russian-flagged vessel using pots only. The precautionary catch limits for crab was set at 10 tons. The Commission agreed that all live finfish taken as by-catch be released with the least possible handling, and that all live *Dissostichus* spp. be tagged prior to release. A total by-catch limit of 0.5 tons was set for all dead finfish. Other requirements in this fishery included, among other things, scientific observations, a data collection plan and an experimental harvest regime.

22. The Commission adopted new *fishery regulation* CM 61–01 (2008)—Squid: Limits on the exploratory fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in the 2008/09 season.

The Commission carried forward the limits for the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in 2008/09, noting that no notification had been submitted for this fishery in 2008/09.

[1] Except for waters adjacent to the Kerguelen Islands and Crozet Islands

[2] Except for waters adjacent to the Prince Edward Islands.

**New Resolutions**

The Commission adopted Resolution 27/XXVII (Use of a specific tariff classification for Antarctic krill) urging Members to adopt and use a specific tariff code for any trade in krill in order to improve Members' knowledge of the trade of krill products.

The Commission adopted Resolution 28/XXVII (Ballast water exchange in the Convention Area). The Antarctic Treaty Parties had adopted Resolution 3 (2006) Ballast Water Exchange in the Antarctic Treaty Area, which set out Practical Guidelines for Ballast Water Exchange in the Antarctic Treaty Area. The aim of the guidelines was to support early implementation of the practical measures identified in the International Convention for the Control and Management of Ships' Ballast Waters and Sediments, 2004 (IMO Ballast Water Management Convention). The guidelines were subsequently forwarded to the Marine Environment Protection Committee of the International Maritime Organization (IMO), which also adopted them in Resolution MEPC.164 (56).

The Commission noted that all CCAMLR Members have endorsed the guidelines for use in the Antarctic Treaty Area, through the IMO Resolution. It agreed to implement the guidelines for application to vessels engaged in harvesting and associated activities, as set out in Article II.3 of the CCAMLR Convention. In addition, although in practical terms any vessel transiting the Convention Area on route to the Antarctic Treaty Area should already be using the guidelines, the guidelines were extended to vessels operating only in the Convention Area north of 60 degrees S. Accordingly, the Commission adopted Resolution 28/XXVII.

For further information, see the CCAMLR Web site at *www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2008/2009), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6210–1111).

**Authority:** 16 U.S.C. 2431 *et seq.*

Dated: June 11, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E9–14266 Filed 6–16–09; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–3338.

**SUPPLEMENTARY INFORMATION:** Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period January 1, 2009, through March 31, 2009.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act)

being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 11, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross [1] subsidy ($/lb) | Net [2] subsidy ($/lb) |
|---|---|---|---|
| 27 European Union Member States [3]. | European Union Restitution Payments | $0.00 | $0.00 |
| Canada | Export Assistance on Certain Types of Cheese | 0.31 | 0.31 |
| Norway | Indirect (Milk) Subsidy | 0.00 | 0.00 |
| | Consumer Subsidy | 0.00 | 0.00 |
| | Total | 0.00 | 0.00 |
| Switzerland | Deficiency Payments | 0.00 | 0.00 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. E9–14241 Filed 6–16–09; 8:45 am]
**BILLING CODE 3510–DS–P**

## DEPARTMENT OF DEFENSE

### United States Air Force

### Notice of Intent To Prepare an Environmental Impact Statement for Modification of the Condor 1 and Condor 2 Military Operations Areas Used by the 104th Fighter Wing of the Massachusetts Air National Guard

**AGENCY:** Air National Guard, Department of Defense.

**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (*42 United States Code [U.S.C.] 4321–4347*), the Council on Environmental Quality (CEQ) NEPA Regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), and the United States Air Force's (USAF) Environmental Impact Analysis Process (EIAP, 32 CFR part 989), the Air Force is issuing this notice to advise the public and other Federal agencies that the ANG intends to prepare an Environmental Impact Statement (EIS) for proposed modifications of the Condor 1 and Condor 2 Military Operations Areas (MOAs) used by the 104th Fighter Wing (FW) of the Massachusetts ANG (MAANG). The 104th FW is based at Barnes ANG Base in Westfield, Massachusetts. The study area for this EIS includes portions of Piscataquis, Somerset, Franklin, and Oxford counties in Maine and a portion of Coos County, New Hampshire.

The ANG and Federal Aviation Administration (FAA) completed an Environmental Assessment (EA) of this proposal in June 2008. However, in response to requests from elected officials and the general public, the ANG has elected to prepare an EIS. The ANG conducted five previous scoping meetings in the towns of Rumford, Mexico, Rangeley, and Farmington (2), Maine as part of the EA process; the previous scoping meetings are sufficient and follow-on scoping meetings are not deemed necessary. However, the Air Force requests formal written scoping comments from the public, state and local government agencies, as well as affected Federal agencies for 30 days after the publication date of this NOI, to ascertain if there are additional issues relevant to the range of actions, alternatives, and impacts to be examined in detail in the draft EIS.

The Condor 1 and 2 MOAs are centered approximately 200 nautical miles northeast of Barnes ANG Base. The altitudes of both MOAs currently extend from 7,000 feet above mean sea level (MSL) (between approximately 2,800 feet and 6,300 feet above ground level [AGL]) up to 18,000 ft MSL. Condor 1 MOA is located immediately west of Condor 2 MOA. The Condor 1 and 2 MOAs are currently utilized by aircraft from the MAANG, the Vermont ANG, the United States Air Force, and the United States Navy. Units from these services utilize a variety of aircraft including the F–15, F–16, KC–10, KC–135, and P–3. Of these aircraft, F–15 and F–16 operations currently constitute 86–88% of annual operations in the Condor 1 and 2 MOAs.

The Ready Aircrew Program (RAP) is the United States Air Force's continuation training program designed to focus training or develop capabilities needed to accomplish a unit's core missions. The RAP requirements for every qualified F–15 and F–16 pilot include Low Altitude Awareness Training (LOWAT) which includes realistic, mission oriented air-to-air operations while in a LOWAT-certified low-altitude block at or below 1,000 feet AGL, as well as Low Slow/Visual Identification intercept and Slow Shadow intercept training missions. These training missions require pilots to identify and engage aerial targets at low altitude, and perform low altitude navigation, tactical formation, and defensive maneuvering to avoid or negate threats.

In order to be Combat Mission Ready, all F–15 and F–16 pilots are required to demonstrate proficiency in these skills down to 500 feet AGL, over land, on a regular basis. Pilot operational training standards require missions to be accomplished in the low, medium, and high altitude regimes. As currently defined, the floors of Condor 1 and 2 MOAs are too high to allow for the effective and efficient completion of required training. The purpose of the Proposed Action is to rectify these deficiencies and provide the 104th FW with adequate training airspace in a safe training environment to fulfill its mission.

The 104th FW proposes to combine the Condor 1 and 2 MOAs, divide the combined MOA into Condor Low MOA and Condor High MOA, and lower the flight floor of the proposed Condor Low MOA from 7,000 feet MSL to 500 feet AGL. Condor Low MOA would extend from 500 feet AGL up to, but not include, 7,000 feet MSL. Condor High MOA would extend from 7,000 feet MSL up to, but not include, 18,000 MSL. As part of the EIAP, and in accordance with the requirements of NEPA, the EIS will consider potential alternatives to the Proposed Action. Other alternatives to be considered include lowering the floor of Condor 1 MOA and leaving Condor 2 MOA unchanged, completing low-altitude training in other airspace in the Northeast, deploying to conduct low-altitude training, and no action.

The draft EIS will be made available for a 45-day public review and comment period. The Air Force will sponsor a public hearing on the draft EIS in mid-August 2009 at the Civic Center in Augusta, Maine. Notification of hearing time and related logistics will be made via local public notifications.

No additional meetings are planned at this time. In addition to comments received at the public hearing, any written comments on the draft EIS received at the address below by October 1, 2009, will be considered in the preparation of this EIS.

**FOR FURTHER INFORMATION CONTACT:** Major Stephen R. Lippert NGB/A 7AM, Program Manager, 3500 Fetchet Avenue, Andrews AFB, MD 20762–5157, Ph: (301) 836–8167, *stephen.lippert@ang.af.mil.*

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. E9–14216 Filed 6–16–09; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 17, 2009.

**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, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* New Collection.

*Title:* Beginning Teacher Longitudinal Study (BTLS) 2009–2012.

*Frequency:* Annually.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,891.

*Burden Hours:* 513.

*Abstract:* The New Teacher Longitudinal Survey will follow a sample of public school teachers who were in their first year of teaching in 2007–08. These teachers were first interviewed as part of the 2007–08 Schools and Staffing Survey (SASS) and were also part of the 2008–09 Teacher Follow-up Survey. They will be contacted again in 2010 as part of a second follow-up. Following this small subset of the SASS sample for at least a decade will provide much needed data on teachers' careers, attrition, and mobility.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4068. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–14186 Filed 6–16–09; 8:45 am]

**BILLING CODE 4000–01–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 before July 17, 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, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

**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, Information Collection Clearance Division, 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: June 11, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* Electronic Debit Payment Option for Student Loans.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,600.

*Burden Hours:* 133.

*Abstract:* The Pre-Authorized Debit Account (PDA) payment option allows borrowers with defaulted federal student loans that are held by the U.S. Department of Education's (ED's) Federal Student Aid Collections (Collections) unit to have their loan payments automatically debited from their checking or savings accounts and sent to ED. Borrowers who choose the use the PDA option to make their loan payments must authorize ED to debit their bank accounts.

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 4003. 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. E9–14187 Filed 6–16–09; 8:45 am]

BILLING CODE 4000–01–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 before July 17, 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, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

**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, Information Collection Clearance Division, 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: June 11, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* Federal Perkins Loan Program Master Promissory Note.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

*Responses:* 690,000.

*Burden Hours:* 345,000.

*Abstract:* The Federal Perkins Loan Master Promissory Note (MPN) is a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. The adoption of the MPN in the Perkins Loan Program has simplified the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year.

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 4005. 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. E9–14188 Filed 6–16–09; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

**Note:** This notice inviting applications is open to qualified applicants to serve the following areas only: the District of Columbia; Puerto Rico; and the Virgin Islands.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326C.

**Note:** On March 25, 2008, we published a Notice Inviting Applications for New Awards for FY 2008 in the **Federal Register** (73 FR 15744) inviting applications for CFDA Number 84.326C using the Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind priority. We invited applications in that notice for projects in all 50 States, the District of Columbia, the Virgin Islands, and the outlying areas and the Freely Associated States (FAS) of the Pacific Basin. No applications were submitted to serve the District of Columbia or the Virgin Islands and the single application that was submitted to serve Puerto Rico proposed a budget that exceeded the amount allocated to that area and, therefore, the application was not eligible for review. Through this notice, we invite applications for another competition for State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind to serve the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Dates:

*Applications Available:* June 17, 2009.

*Deadline for Transmittal of Applications:* July 17, 2009.

*Deadline for Intergovernmental Review:* September 15, 2009.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Technical Assistance and Dissemination To Improve Services and Results For Children With Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act, as amended (IDEA) (20 U.S.C. 1400, *et seq.*).

*Absolute Priority:* For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind*

*Background:*

Children who are deaf-blind represent one of the lowest incidence and most diverse groups of learners receiving early intervention, special education, and related services (Muller, 2006). In addition to having combined hearing and vision loss, 90 percent of these children experience concomitant physical or intellectual disabilities and may experience complex medical and behavioral challenges (Killoran, 2007).

Children who are deaf-blind are often isolated and disconnected from people and activities in their homes, schools, and communities both because they cannot access visual and auditory information and because they are not given the individualized supports necessary to access this information. Without individualized supports to access visual and auditory information (*i.e.*, environmental information, such as who is present, what is being said, and what activities are occurring), children who are deaf-blind are at greater risk for not attaining age-appropriate milestones in communication and language, social skills, and activities of daily living, which in turn affects their educational outcomes. Consequently, students who are deaf-blind often exit school at age 22 without viable postsecondary education, employment, or independent living options (Killoran, 2007).

Most State educational agencies (SEAs), Part C State lead agencies, and local educational agencies (LEAs) lack sufficient numbers of personnel with the specialized training, experience, and skills that are needed to provide appropriate early intervention, special education, and related services to children who are deaf-blind (Collins, 1992; Markowitz, 2001; McLetchie, 1992). The critical shortage of personnel to serve children who are deaf-blind can limit access to a free appropriate public education for these children.

Since its inception, the Office of Special Education Programs (OSEP) has funded TA projects and personnel preparation programs to build State and local capacity to serve children who are deaf-blind and their families. As a result of those projects and programs, professionals, advocates, individuals who are deaf-blind, and parents have collaborated to make progress in identifying evidence-based intervention practices for children who are deaf-blind, developing high-quality training materials and resources, and developing networks across States to share information (Killorin, Davies, & McNulty, 2006). However, the National Deaf-Blind Child Count Registry data show that eighty-five percent of school-age children still continue to receive their services in separate settings. More work is needed to ensure that early intervention, special and regular education, and related services personnel have adequate skills to appropriately serve infants and toddlers in natural environments, which may include home and community settings, and school-age children in the least restrictive environment (Warner, 2007). Under this priority, the projects to be funded will create or strengthen collaborative partnerships among families, SEAs, State lead agencies, and LEAs to enhance services and improve outcomes for children who are deaf-blind. Projects will assist SEAs, State lead agencies, and LEAs in ensuring that children served under Part C of IDEA

who are deaf-blind receive services, to the maximum extent appropriate, in natural environments, and children served under Part B of IDEA who are deaf-blind have access to, and are involved and make progress in, the general education curriculum in the least restrictive environment.

*Priority:*

The purpose of this priority is to support the establishment and operation of State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind (projects). Grants are available to support projects in the District of Columbia; Puerto Rico; and the Virgin Islands. Funds awarded under this priority may not be used to provide direct early intervention services under Part C of IDEA, or direct special education and related services under Part B of IDEA.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

*Application Requirements.* An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for the annual performance reports and the final report.

**Note:** For more information on logic models, the following Web site lists multiple online resources: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services; and

(d) A budget for attendance at the following:

(1) A four-day Project Directors' Conference in Washington, DC, during each year of the project period.

(2) A three-day National Consortium on Deaf-Blindness Annual Topical Conference during each year of the project period.

*Project Activities.* To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

*Technical Assistance and Dissemination Activities.*

(a) Facilitate collaborative partnerships between family members of children who are deaf-blind; early intervention, special and regular education, and related services personnel; and SEAs, LEAs, and State lead agencies to develop and implement individualized supports that improve children's outcomes and educational achievement.

(b) Provide information and TA, including distance learning activities and ongoing professional development opportunities paired with on-site coaching, to family members of children who are deaf-blind and early intervention, special and regular education, and related services personnel working with children who are deaf-blind. Information and TA must focus on helping family members and early intervention, special and regular education, and related services personnel—

(1) Identify developmental and educational milestones;

(2) Develop age-appropriate Individualized Family Service Plans and standards-based Individualized Education Programs, which include measurable postsecondary goals for students who are at least 16 years old;

(3) Use children's interests, preferences, and learning characteristics to support learning and development;

(4) Use evidence-based practices to increase children's communication, language, concept development, social interactions, and adaptive behaviors, thereby improving early intervention and educational outcomes;

(5) Use assistive and instructional technologies to maintain or improve children's functional and educational capabilities; and

(6) Increase children's access to and participation in natural environments, which may include home and community settings, and age-appropriate activities-based routines for those served under Part C of IDEA, and access to, and participation and progress in, the general education curriculum in the least restrictive environment for those served under Part B of IDEA.

(c) Work with families, SEAs, State lead agencies, LEAs, and institutions of higher education (IHEs) to use information from the National Consortium on Deaf-Blindness and other appropriate sources to develop—

(1) A shared understanding across the stakeholder groups of how to support children who are deaf-blind within local systems and communities;

(2) A plan that addresses the professional development needs of personnel who serve children who are deaf-blind, including paraprofessionals who serve as interveners. An ''intervener'' is an individual who has received specialized training to assist children who are deaf-blind by (a) facilitating access to environmental information, such as who is present, what is being said, and what activities are occurring, (b) supporting their development and use of communication skills, and (c) promoting their social and emotional well-being by maintaining a trusting and interactive relationship (Alsop, Blaha, & Kloos, 2000). For further information regarding interveners *see http://www.nationaldb.org/ISSelectedTopics.php?topicCatID=10;* and

(3) Program improvement strategies for the State Performance Plans and Annual Performance Reports and local program and school improvement activities.

(d) Work with SEAs, LEAs, State lead agencies and, as appropriate, IHEs to implement the professional development plan.

(e) If the project maintains a Web site, ensure that it meets government or industry-recognized standards for accessibility and links to the Web site operated by the Technical Assistance Coordination Center, which OSEP intends to fund in FY 2009.

*Leadership and Coordination Activities.*

(a) Communicate and collaborate, on an ongoing basis, with the National Consortium on Deaf-Blindness (NCDB) and ensure that the project's staff is aware of NCDB's resources, products, and services that may be used in its training and TA activities.

(b) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects, including Parent Training and Information Centers; the Postsecondary Education Programs Network; the National Instructional Materials Accessibility Standard Development and Technical Assistance Centers; Bookshare.org for Education (B4E); the Center for Implementing Technology in Education; the Family Center on Technology and Disability; the National Center for Technology Innovation; the Regional Resource Centers; the National Center for Leadership in Vision Impairment; and low-incidence personnel development projects. This collaboration could include the

coordination of TA services, the planning and carrying out of TA meetings and events, and possible joint development of products.

(c) Though product development should not be a primary function of this project, if the project identifies an emerging need for a product (*e.g.,* print materials, DVDs, videos), submit for approval a proposal describing the content and purpose of the product prior to development to the OSEP Project Officer.

(d) Participate in, organize, or facilitate, as appropriate, OSEP communities of practice (*http://www.tacommunities.org*) that are aligned with the project's objectives as a way to support discussions and collaboration among key stakeholders.

(e) Contribute, on an ongoing basis, updated information on the project's services to OSEP's Technical Assistance and Dissemination Matrix (*http://matrix.rrfcnetwork.org*), which provides current information on Department-funded TA services to a range of stakeholders.

(f) Maintain ongoing communication with the OSEP Project Officer through regular phone conversations and e-mail communication.

**References**


Alsop, L., Blaha, R., & Kloos, E. (2000). *The intervener in early intervention and educational settings for children and youth with deafblindness* (Briefing Paper). Monmouth, OR: The National Technical Assistance Consortium for Children and Young Adults Who Are Deaf-Blind.

Collins, M. T. (1992). Educational Services. In J.W. Reiman & P.A. Johnson (Eds.), *Proceedings from the National Symposium on Children and Youth Who Are Deaf-Blind* (pp. 165–178). Monmouth, OR: Teaching Research Publications.

Killoran, J. (2007). *The national deaf-blind child count: 1998–2005 in review.* Monmouth, OR: National Consortium on Deaf-Blindness. Retrieved April 7, 2009, from *http://www.nationaldb.org/documents/products/Childcountreview0607Final.pdf.*

Killorin, J., Davies, P., & McNulty, K. (August 2006). The NTAC Outcomes and Performance Indicators: A System for Documenting Outcomes for Children and Youth with Deaf-Blindness, their Families, and the Service Providers and Systems that Serve Them. Western Oregon University, Monmouth, OR. Retrieved April 7, 2009, from *http://www.nationaldb.org/documents/products/OPIs12-08.pdf.*

Markowitz, J. (April 2001). Personnel to Support the Education of Children and Youth with Deafblindness. Alexandria, VA: Project Forum.

McLetchie, B.A.B. (1992) Personnel Preparation. In J.W. Reiman & P.A. Johnson (Eds.), *Proceedings from the National Symposium on Children and Youth Who Are Deaf-Blind* (pp. 203–219). Monmouth, OR: Teaching Research Publications.

Muller, E. (2006, July). Deaf-blind child counts: Issues and challenges. *Alexandria, VA: Project Forum.*

Warner, R. (2007, February). *The Real Deal.* Presentation at the conference of Deafblindness: A Real Vision, Hampton, VA.


*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1463 and 1481.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $160,000. Please refer to the ''Funding Level'' column in the chart shown in the *Maximum Awards* section of this notice for the estimated dollar amounts for individual awards.

*Estimated Range of Awards:* $30,000–$65,000.

*Estimated Average Size of Awards:* $53,000.

*Maximum Awards:* The following chart lists the maximum amount of funds for the District of Columbia; Puerto Rico; and the Virgin Islands for a single budget period of 12 months. A State may be served by only one supported project. In determining the maximum funding levels for each State the Secretary considered, among other things, the following factors:

(1) The total number of children from birth through age 21 in the State.

(2) The number of people in poverty in the State.

(3) The previous funding levels.

(4) The maximum and minimum funding amounts.

2009 FUNDING LEVELS FOR CFDA NO. 84.326C

| State | Funding level |
|---|---|
| DC | $65,000 |
| PR | 65,000 |
| VI | 30,000 |

We will reject an application for a State project that proposes a budget exceeding the funding level for any single budget period of 12 months. An applicant may apply for more than one State project award; however a separate application must be submitted for each State project. We will reject an application that proposes to serve more than one State or area specified in the chart above.

The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

*Estimated Number of Awards:* 3.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; FAS; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/*

*edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA Number 84.326C.

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. You must limit the application narrative to the equivalent of no more than 70 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 that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to the application narrative in Part III.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* June 17, 2009.

*Deadline for Transmittal of Applications:* July 17, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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 of 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.

*Deadline for Intergovernmental Review:* September 15, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The 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.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your

application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.326C), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.326C), 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 grant 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

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

## 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 of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of 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, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report 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 established a set of performance measures, including long-term

measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities program. These measures focus on the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures in annual reports to the Department.

Grantees also will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

### VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Anne Smith, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4066, Potomac Center Plaza (PCP), Washington, DC 20202–2600. *Telephone:* (202) 245–7529.

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

*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 Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: June 11, 2009.

**Andrew J. Pepin,**

*Executive Administrator for Special Education and Rehabilitative Services.*

[FR Doc. E9–14258 Filed 6–16–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before August 17, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments may be sent to Jacqueline D. Rogers, U.S. Department of Energy, Office of Health, Safety and Security, HS–11, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at 202–586–8548, or by e-mail at: *jackie.rogers@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jacqueline D. Rogers, U.S. Department of Energy, Office of Health, Safety and Security, HS–11, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at 202–586–8548, or by e-mail at *jackie.rogers@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: *(1) Current OMB Control Number:* 1910–5112; *(2) Information Collection Request Title:* Final Rule: Chronic Beryllium Disease Prevention Program; *(3) Type of Review:* Renewal; *(4) Purpose:* This collection provides the Department with the information needed to reduce the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimize the levels and potential exposure to beryllium; and provide medical surveillance to ensure early detection of disease; *(5) Respondents:* 5,799 (19 DOE sites and 5,780 workers affected by the rule); *(6) Estimated Number of Burden Hours:* 25,024; *(7) Estimated Financial Burden:* $1,227,720.

**Statutory Authority:** Atomic Energy Act of 1954, 42 U.S.C. 2201, and the Department of Energy Organization Act, 42 U.S.C. 7191 and 7254.

**Lesley A. Gasperow,**

*Director, Office of Resource Management, Office of Health, Safety and Security.*

[FR Doc. E9–14232 Filed 6–16–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### International Energy Agency Meetings

**AGENCY:** Department of Energy.

**ACTION:** Notice of Meetings.

**SUMMARY:** A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with the IEA's Workshop on Public Stock Release will be held on June 23, 2009, at the headquarters of the IEA in Paris, France. A meeting of the IAB will be held at the IEA's headquarters on June 24, 2009, in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

**DATES:** June 23–24, 2009.

**ADDRESSES:** 9, rue de la Fédération, Paris, France.

**FOR FURTHER INFORMATION CONTACT:** Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting involving members of the Industry Advisory Board (IAB) in connection with the IEA's Workshop on Public Stock Release will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 23, 2009, beginning at 10 a.m. The purpose of the meeting is to share information and experience between IEA member countries in order to improve public oil stock release mechanisms and ensure that proposed stocks are taken up by the market. A meeting of the IAB will be held at the headquarters of the IEA on June 24, 2009, commencing at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the same location and time. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on June 24. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting and to discuss the June 23 IEA Workshop on Public Stock Release.

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 126th Meeting.
3. Status of Compliance with IEP Stockholding Commitments.
4. Update on the Oil Market.
5. Emergency Response Exercise:
—Initial Results from the Workshop on Public Stock Release, June 23, 2009.
6. Emergency Response Review Program:
—Emergency Response Review of Belgium;
—Schedule of Emergency Response Reviews.
7. Policy and Other Developments in Member Countries:
—Australia;
—United States.
8. Activities with International Organizations and Non-Member Countries:
—Update on the EU Directive on Emergency Oil Stocks;
—Report on the Emergency Response Exercises in Thailand, May 18–19, 2009:
—Report on the IEA/HANDA/EC Workshop on Establishment of Emergency Oil Stocks in Southeast Europe, May 28–29, 2009, Croatia.
9. Update on the Natural Gas Market.
10. Emergency Policy for Natural Gas:
—Natural Gas Security.
11. Report from the Industry Advisory Board.
12. Documents for Information:
—Emergency Reserve Situation of IEA Member Countries on April 1, 2009;
—Base Period Final Consumption: 2Q 2008–1Q 2009;
—Monthly Oil Statistics: March 2009;
—Emergency Contacts List.
13. Other Business:
—Tentative Schedule of Meetings:
—October 20–21, 2009;
—March 23–25, 2010;
—June 29–30 and July 1, 2010;
—November 16–18, 2010.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the Government Accountability Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 10, 2009.

**Diana D. Clark,**

*Assistant General Counsel for International and National Security Programs.*

[FR Doc. E9–14234 Filed 6–16–09; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12665–003]**

### New York Tidal Energy Company; Notice of Intent To File License Application, Filing of Draft Application, Request for Waivers of Integrated Licensing Process Regulations Necessary for Expedited Processing of a Hydrokinetic Pilot Project License Application, and Soliciting Comments

June 10, 2009.

a. *Type of Filing:* Notice of Intent to File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 12665–003.

c. *Dated Filed:* June 1, 2009.

d. *Submitted By:* New York Tidal Energy Company.

e. *Name of Project:* East River Tidal Energy Pilot Project.

f. *Location:* In the East River at Hell Gate, in New York City, New York. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Mike Hoover, New York Tidal Energy Company, 1785 Massachusetts Ave., NW., Suite 100, Washington, DC 20036, (202) 772–0099.

i. *FERC Contact:* Timothy Konnert (202) 502–6359.

j. New York Tidal Energy Company (NYTEC) has filed with the Commission: (1) A notice of intent (NOI) to file an application for an original license for a kinetic hydropower pilot project and a draft license application with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act consultation; and (5) a request to be designated as the non-federal representative for section 106 consultation under the National Historic Preservation Act (collectively the pre-filing materials).

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should be sent to the address above in paragraph h. In addition, all comments (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (East River Tidal Energy Pilot Project) and number (P–12665–003), and bear the heading ''Comments on the proposed East River Tidal Energy Pilot Project.'' Any individual or entity interested in submitting comments on the pre-filing materials must do so by July 10, 2009.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

l. With this notice, we are approving NYTEC's request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal

consultation with: (a) The U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required by section 7 of ESA; and (b) the New York State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. This notice does not constitute the Commission's approval of NYTEC's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

n. The proposed East River Tidal Energy Pilot Project would consist of: (1) A 2-meter-diameter 20 kW capacity hydrokinetic device during Phase 1, which would be replaced by a 6-meter-diameter 200 kW device in Phase 2; (2) an underwater cable connecting the hydrokinetic device to shore at one of two proposed locations; and (3) appurtenant facilities for operating and maintaining the project. NYTEC does not provide an estimate of annual generation of the proposed pilot project.

o. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

p. *Pre-filing process schedule.* The pre-filing process will be conducted pursuant to the following tentative schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Date |
|---|---|
| Comments on pre-filing materials due | July 10, 2009. |
| Issuance of meeting notice (if needed) | July 24, 2009. |
| Public meeting/technical conference (if needed) | August 24, 2009. |
| Issuance of notice concluding pre-filing process and ILP waiver request determination. | August 10, 2009 (if no meeting is needed) September 7, 2009 (if meeting is needed). |

q. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14197 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13416–000]**

### Gunderson Lutheran Hydro LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 10, 2009.

On March 30, 2009, Gunderson Lutheran Hydro LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 7 (Lock & Dam 7 Project), to be located at River Mile 702.5 on the Mississippi River in Winona County, Minnesota, and La Crosse, Wisconsin, and near the town of La Crescent, MN.

The proposed Lock & Dam 7 Project would be integral with the existing U.S. Army Corps of Engineers (Corps) Lock & Dam No. 7 which is comprised of a 940-foot-long gated dam section with 5 roller gates and 11 Taintor gates, a 600 foot-long lock, and a 8,100-foot-long earth dike. The Corps project reservoir occupies a portion of the Upper Mississippi River National Wildlife and Fish Refuge.

The proposed hydro project would consist of: (1) 7 uni-directional turbines installed in an auxiliary lock with generators having a total installed capacity of 4,963 kilowatts (kW); (2) a new transformer; and (3) a new 500-foot-long transmission line to an existing above ground local distribution system. The project would have an estimated average annual generation of 41.33 gigawatt-hours.

*Applicant Contact:* Mr. Jeff Rich, Gunderson Lutheran Hydro LLC, 1900 South Avenue, LaCrosse, WI 54601, phone (608) 775–6970.

*FERC Contact:* Michael Spencer, (202) 502–6093.

*Competing Application:* This application competes with Project No. 13337–000 filed November 24, 2008. Competing applications must be filed on or before July 13, 2009.

*Deadline for filing comments, motions to intervene:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13337) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14198 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP09–428–000]**

### Blue Sky Gas Storage, LLC; Notice of Application

June 10, 2009.

Take notice that on June 5, 2009, Blue Sky Gas Storage, LLC (Blue Sky), 1000 Louisiana Street, Suite 6905, Houston, TX 77002, filed in the above referenced docket an abbreviated application pursuant to section 7(c) of the Natural

Gas Act (NGA), and parts 157 and 284 of the Commission's regulations for an order granting a certificate of public convenience to develop, construct, own and operate an underground gas storage facility (Blue Sky Gas Storage Project), which will allow Blue Sky to provide up to 4.4 Bcf of working gas capacity in Logan County, Colorado. Additionally, Blue Sky requests a blanket certificate authorizing it to engage in certain self-implementing routine activities under part 157, subpart F, and a blanket certificate under part 284, subpart G, authorizing Blue Sky to provide open-access non-discriminatory firm and interruptible natural gas storage services. Blue Sky also requests authorization to charge market-based rates for the proposed storage services and the Commission's approval of Blue Sky's Pro-Forma Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Thomas Shaw, President, Blue Sky Gas Storage, LLC, 1000 Louisiana Street, Suite 6905, Houston, TX, 77002, at (713) 650–0179.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* July 1, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14195 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No 1.

June 10, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP09–757–000.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits Third Revised Sheet No 4B *et al.* to its FERC Gas Tariff, Second Revised Volume No 1.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090609–0089.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

*Docket Numbers:* RP09–758–000.
*Applicants:* Southern Star Central Gas Pipeline, Inc.
*Description:* Southern Star Central Gas Pipeline, Inc submits Fourth Revised Sheet 1 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 7/10/09.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090609–0088.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

*Docket Numbers:* RP09–759–000.
*Applicants:* Egan Hub Storage, LLC.
*Description:* Egan Hub Storage, LLC submits Sixth Revised Sheet No 201 *et al.* to its FERC Gas Tariff, First Revised Volume No 1.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090609–0091.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

*Docket Numbers:* RP09–760–000.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits Second Revised Sheet 80B to its FERC Gas Tariff, Fifth Revised Volume 1 to be effective 7/10/09.

*Filed Date:* 06/09/2009.

*Accession Number:* 20090609–0095.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–14209 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 2

June 10, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP08–374–003.

*Applicants:* Maritimes & Northeast Pipeline, LLC.

*Description:* Maritimes & Northeast Pipeline, LLC submits Second Revised Sheet 268 to FERC Gas Tariff, First Revised Volume 1 to be effective 6/30/09.

*Filed Date:* 06/09/2009.

*Accession Number:* 20090609–0094.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

*Docket Numbers:* RP96–272–093.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits Ninth Revised Sheet No 66B 01a *et al* to its FERC Gas Tariff, Fifth Revised Volume No 1.

*Filed Date:* 06/04/2009.

*Accession Number:* 20090605–0304.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 16, 2009.

*Docket Numbers:* RP96–320–109.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Gulf South Pipeline Company, LP submits negotiated rate letter agreement executed by Gulf South and EnCana Marketing Inc.

*Filed Date:* 06/04/2009.

*Accession Number:* 20090605–0303.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 16, 2009.

*Docket Numbers:* RP09–466–003.

*Applicants:* Kern River Gas Transmission Company.

*Description:* Kern River Gas Transmission Company submits Substitute Fourth Revised Sheet No 94 *et al* to its FERC Gas Tariff, Second Revised Volume No 1.

*Filed Date:* 05/29/2009.

*Accession Number:* 20090601–0156.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 15, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–14208 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 09, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09–49–000.

*Applicants:* Blackstone Wind Farm, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Blackstone Wind Farm, LLC.

*Filed Date:* 06/08/2009.

*Accession Number:* 20090608–5043.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 29, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98–1643–013.

*Applicants:* Portland General Electric Company.

*Description:* Notice on Non-Material Change in Status of Portland General Electric Company.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090608–5091.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 29, 2009.

*Docket Numbers:* ER01–596–008; ER01–560–014; ER01–2690–012; ER02–963–012; ER02–2509–009; ER02–1942–011; ER01–559–014; ER01–557–014; ER01–2641–014; ER00–1780–010; ER00–840–011; ER01–137–009; ER02–77–012; ER05–524–007; ER94–389–032; ER98–1767–017; ER99–2992–010; ER99–3165–011.
*Applicants:* Alabama Electric Marketing, LLC, Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Mexico Electric Marketing, LLC, Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, University Park Energy, LLC, Wolf Hills Energy, LLC.
*Description:* Alabama Electric Marketing, LLC et al. submits revised tariff sheets removing references to Replacement Reserves, Non-Spinning Reserves, and Automatic Generation Control from the third party provider provisions.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090609–0027.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER01–1527–013; ER01–1529–013.
*Applicants:* Sierra Pacific Power Company; Nevada Power Company.
*Description:* Nevada Power Company and Sierra Pacific Power Company, Non-Material Change In Status Filing for Nevada Power Company and Sierra Pacific Power Company.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090608–5023.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 29, 2009.

*Docket Numbers:* ER08–1404–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits termination of the Independent Market Monitor-Balancing Authority Agreement, Rate Schedule 7, *etc.*
*Filed Date:* 06/05/2009.
*Accession Number:* 20090605–0306.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER09–823–000.
*Applicants:* MidAmerican Energy Company.
*Description:* MidAmerican Energy Company submits Answer filed 6/3/09 to the Deficiency Letter issued on 5/4/09.
*Filed Date:* 06/04/2009.
*Accession Number:* 20090608–0101.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 25, 2009.

*Docket Numbers:* ER09–988–001; ER09–989–001; ER09–990–001.
*Applicants:* NextEra Energy Duane Arnold, LLC.
*Description:* NextEra Energy Duane Arnold, LLC *et al.* submits an amendment to the market based rate tariff.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090609–0031.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER09–1206–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits Transmission Interconnection Agreement for Points of Delivery dated 5/12/09 between Price City and PacifiCorp, to be designated as PacifiCorp Rate Schedule FERC 642.
*Filed Date:* 05/26/2009.
*Accession Number:* 20090528–0151.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 16, 2009.

*Docket Numbers:* ER09–1247–001.
*Applicants:* California Independent System Operator Corp.
*Description:* California Independent System Operator Corp submits a corrected version of its 6/1/09 filing of proposed amendments re implement acceleration of the payment timeline.
*Filed Date:* 06/04/2009.
*Accession Number:* 20090605–0287.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 25, 2009.

*Docket Numbers:* ER09–1265–001.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits corrected First Revised Sheet 1 *et al.* to Original Rate Schedule FERC 615.
*Filed Date:* 06/08/2009.
*Accession Number:* 20090609–0085.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 29, 2009.

*Docket Numbers:* ER09–1277–000.
*Applicants:* PJM Interconnection LLC.
*Description:* PJM Interconnection, LLC submits an executed interconnection service agreement with NAEA Ocean Peaking Power, LLC *et al.*
*Filed Date:* 06/04/2009.
*Accession Number:* 20090605–0286.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 25, 2009.

*Docket Numbers:* ER09–1279–000.
*Applicants:* American Electric Power Service Corporation.
*Description:* American Electric Power Service Corporation submits Original Sheet 1 *et al.* to its First Revised Rate Schedule FERC No 34.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090605–0305.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER09–1281–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* California Independent System Operator Corp submits an amendment to its tariff re designation of references bus in day-ahead price calculations.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090609–0028.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER09–1282–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc., Informational Filing of the Internal Market Monitoring Unit's Report Analyzing the Operations and Effectiveness of the Forward Capacity Market.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090605–5160.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA09–22–001.
*Applicants:* Florida Power & Light Company.
*Description:* Penalty Distribution Compliance Filing of Florida Power & Light Company.
*Filed Date:* 06/05/2009.
*Accession Number:* 20090605–5105.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified *Comment Date.* It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need

not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–14207 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 10, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09–50–000.

*Applicants:* AES Armenia Mountain Wind, LLC.

*Description:* Notice of Self-certification as an Exempt Wholesale Generator of AES Armenia Mountain Wind, LLC.

*Filed Date:* 06/10/2009.

*Accession Number:* 20090610–5086.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 01, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER04–691–091.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits response to 5/8/09 Commission's letter re additional information on, and requiring the amendment of, the Midwest ISO's compliance filing dated 12/8/08.

*Filed Date:* 06/05/2009.

*Accession Number:* 20090610–0048.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 26, 2009.

*Docket Numbers:* ER09–411–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits response to 5/8/09 Commission's letter re additional information on, and requiring the amendment of, the Midwest ISO's compliance filing dated 12/12/08.

*Filed Date:* 06/08/2009.

*Accession Number:* 20090610–0051.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 29, 2009.

*Docket Numbers:* ER09–1229–000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Niagara Mohawk Power Corporation submits letter agreement dated 10/19/89 amending transmission interconnection agreement Rate Schedule 136 with the Power Authority of the State of New York.

*Filed Date:* 05/29/2009.

*Accession Number:* 20090609–0062.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 19, 2009.

*Docket Numbers:* ER09–1260–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits Transmittal letter & Revised Open Access Transmission Tariff, Third Revised Volume 8.

*Filed Date:* 06/01/2009.

*Accession Number:* 20090602–0095.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 22, 2009.

*Docket Numbers:* ER09–1278–000.

*Applicants:* AES Armenia Mountain Wind, LLC.

*Description:* Application of AES Armenia Mountain Wind, LLC for Acceptance of Market-Based Rate Tariff and Granting of Waivers and Blanket Authorizations re AES Armenia Mountain Wind, LLC.

*Filed Date:* 06/09/2009.

*Accession Number:* 20090610–0063.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES09–25–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Amendment to Application of Southwest Power Pool, Inc.

*Filed Date:* 06/10/2009.

*Accession Number:* 20090610–5060.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–14206 Filed 6–16–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 459–212]**

### Union Electric Company, dba AmerenUE; Notice of Availability of Environmental Assessment

June 10, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 380), Commission staff has reviewed the Shoreline Management Plan (SMP), filed March 28, 2008, for the Osage Project (FERC No. 459). An environmental assessment (EA) has been prepared as part of staff's review. The project licensee, AmerenUE, developed the SMP in accordance with license article 417 of the license for the Osage Project. The project is located in Benton, Camden, Miller, and Morgan Counties, Missouri.

In the EA, Commission staff analyzes the probable environmental effects of the SMP and concludes that approval of the SMP, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission's Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–459) in the docket number field to access the document. For assistance, call (202) 502–8222, or (202) 502–8659 (for TTY).

Any comments should be filed by, July 10, 2009, and should be addressed to Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference the Osage Project No. 459, on all comments. For further information on this notice, please contact Shana High at (202) 502–8674.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages electronic filing.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14194 Filed 6–16–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP09–035–000]**

### Palomar Gas Transmission, LLC; Supplemental Notice Requesting Comments on the Maupin Bridge and Warmspring Reservation Alternatives and on a Potential Amendment to the Land and Resource Management Plan for the Crooked River National Grassland for the Proposed Palomar Gas Transmission Project, and Notice of Public Scoping Meetings

**DATE:** June 10, 2009.

As previously noticed on October 29, 2007 and July 18, 2008, the staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts of the Palomar Gas Transmission Project that could result from the construction and operation of a new underground natural gas pipeline proposed by the Palomar Gas Transmission, LLC (Palomar). This notice explains the additional scoping process that will be used to gather input from the public and interested agencies on two route alternatives to be evaluated for crossing the Deschutes River.

During our evaluation of Palomar's proposed Project, the Bureau of Land Management (BLM) requested that Palomar provide a Visual Resource Management Analysis of the current proposed Deschutes River crossing, a Congressionally designated Wild and Scenic River with one of its Outstanding Remarkable Values being scenic. Based on Palomar's analysis, the BLM has indicated the need for FERC to consider alternatives which avoid crossing the Deschutes River in a visually sensitive area. In addition, the Confederated Tribes of the Warm Springs have requested that the FERC consider a pipeline route that crosses their reservation.

This Supplemental Notice announces the opening of a limited scoping period the Commission will use to gather input from the public and interested agencies, specifically for the two proposed route alternatives. One would traverse land in the City of Maupin and the second would cross areas near Madras and the land belonging to the Confederated Tribes of the Warm Springs areas. With this Notice, we [1] are specifically requesting comments on these route alternatives, referred to as the Maupin Bridge Alternative and the Warm Springs Reservation Alternative. Your input will help determine which issues need to be evaluated in the EIS. Please note that this scoping period will close on July 13, 2009. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 1.

Comments may be submitted in written form or verbally. Further instructions on how to submit comments and additional details of the public scoping meetings are provided in the public participation section of this notice. In lieu of, or in addition to, sending written comments, you are invited to attend public scoping meetings that have been scheduled for June 29, 2009 in Maupin, Oregon, and June 30, 2009 in Madras, Oregon. Details on the meetings are as follows:

Monday, June 29, 2009 at 7 p.m. (PST), South Wasco County High School, 699 4th Street, Maupin, Oregon.

Tuesday, June 30, 2009 at 7 p.m. (P.S.T.), Madras High School, 390 SE 10th Street, Madras, Oregon.

The FERC is the lead federal agency in the preparation of the EIS, and is preparing the EIS to satisfy the requirements of the National Environmental Policy Act (NEPA). The Commission will use the EIS in its decision-making processes to determine whether or not to authorize the Project.

This Notice is being sent to landowners affected by the current proposed route and alternative routes; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this Notice, you may be contacted by a Palomar representative about the acquisition of an easement to construct, operate, and maintain the proposed Project facilities. Depending on the alternative selected as the certificated route, Palomar would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A number of fact sheets prepared by the FERC, including *An Interstate Natural Gas Facility on My Land? What Do I Need To Know?* and *Guide to Electronic Information at FERC,* are available for viewing on the FERC Internet Web site (*www.ferc.gov*), using the ''For Citizens'' link. These fact sheets address a number of typically asked questions, including how to participate in the Commission's proceedings and how to access information on FERC-regulated projects in your area.

**Involvement of Other Agencies**

The U.S. Department of Agriculture, Forest Service, the BLM, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers have agreed to participate as cooperating agencies in the preparation of the EIS to satisfy their respective NEPA responsibilities. In addition, the BLM is coordinating with other Deschutes River management partners as required by Congress in the Wild and Scenic Rivers Act, including the Confederated Tribes of the Warm Springs and the State of Oregon.

**Summary of the Proposed Project**

Palomar has announced its proposal to construct and operate a new natural gas pipeline and associated structures with a bi-directional flow capacity of 1.4 billion cubic feet per day. The Project would be located in northwest Oregon and consist of a 216.9- mile-long, 36-inch-diameter pipeline running from near Shaniko, Wasco County, Oregon to the proposed Bradwood Landing Terminal in Clatsop County, Oregon. The pipeline would cross Wasco, Clackamas, Marion, Yamhill, Washington, Columbia, and Clatsop Counties in Oregon. The pipeline would connect the existing Gas Transmission Northwest Corporation (GTN) mainline pipeline system in central Oregon to the Northwest Natural Gas Company (NW Natural) distribution system near Molalla in Clackamas County. The pipeline is also proposed to extend to other potential interconnections with NW Natural's system and to an interconnection with NorthernStar Energy LLC's proposed Bradwood Landing pipeline in Clatsop County, Oregon. The proposed Project would also include a 3.8-mile-long, 24-inch-diameter lateral pipeline [2] near Molalla, Clackamas County, Oregon, to connect the Palomar Project mainline to an existing NW Natural city gate. Certain associated aboveground facilities are also proposed, i.e., mainline valves spaced at intervals along the pipeline as defined by U.S. Department of Transportation regulations per the Code of Federal Regulations (CFR) 49 Part 192, at least three meter stations, and pig launcher and receiver facilities.

More specifically, Palomar proposes the following primary Project components:

- A 216.9-mile-long, 36-inch-diameter underground natural gas mainline consisting of two segments:
- The Cascades Segment: a 111.2-miles of mainline from TransCanada's GTN pipeline system northwest of Madras in Wasco County to a location southwest of Molalla in Clackamas County; and a 3.8-mile, 36-inch diameter accessory lateral pipeline, the Molalla Lateral, which would connect the main pipeline to NW Natural's distribution system;
- The Willamette Segment: a 105.7-mile segment commencing at the Molalla Lateral interconnect and terminating at the proposed connection to the proposed Bradwood Landing Terminal in Clatsop County; there is potential for additional interconnections with NW Natural along this route;
- One meter station, seven mainline valves, and one pig launcher/receiver on the Cascade Segment; one pig launcher/receiver and two mainline valves on the Molalla Lateral; and one meter station, seven mainline valves, and one pig launcher/receiver on the Willamette Section;
- Temporary pipe storage and contractor yards at various locations along the pipeline for office trailers, parking, and pipe and equipment storage during construction; and
- Temporary construction roadways and short permanent roads from existing roads to meter station sites and other aboveground facilities.

Palomar is evaluating an alternative pipeline route that would include an overhead crossing of the Deschutes River adjacent to the highway bridge in the City of Maupin, referred to as the Maupin Bridge Alternative. This alternative is approximately 23 miles long, or 1.3 miles shorter than the corresponding segment of the current proposed route, and would begin at a point on the GTN pipeline that is approximately 13 miles southwest of the current starting point near Shaniko Junction. The Maupin Bridge Alternative would be co-located with Highway 197 for approximately 17.2 miles. No compressor stations would be required for this alternative.

Palomar is also evaluating an alternative pipeline route that would be built across the Warm Springs Reservation, referred to as the Warm Springs Reservation Alternative. This alternative is approximately 60.9 miles long, or 9 miles shorter than the corresponding current proposed route segment, and would begin at an existing meter station on the GTN pipeline near the City of Madras, Oregon, approximately 20 miles southwest of the current starting point near Shaniko Junction. The Warm Springs Reservation Alternative would be co-located with existing BPA powerlines for approximately 11.2 miles. A compressor station would be required if this alternative is selected.

A map depicting the proposed Palomar pipeline is attached to this Notice as Appendix 2. A map depicting the two alternative segments and the corresponding current proposed route segment is attached as Appendix 3.[3]

**The EIS Process**

NEPA requires the Commission to take into account the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of scoping is to focus the analysis in the EIS on the important environmental issues. With this Supplemental Notice, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS, and specifically for comments on the Maupin Bridge Alternative and Warm Springs Reservation Alternative. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, and maintenance of the proposed Project under these general headings:

- Geology and Soils;

[2] A lateral pipeline typically takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies can be obtained from the Commission's Web site (excluding maps) at the ''eLibrary'' link, from the Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

- Water resources;
- Aquatic resources;
- Vegetation and Wildlife;
- Threatened and Endangered Species;
- Land use, Recreation, and Visual resources;
- Cultural resources;
- Socioeconomics;
- Air Quality and Noise;
- Reliability and Safety;
- Cumulative Impacts.

In the EIS, we will also evaluate possible alternatives to the proposed Project or portions of the Project (including the Maupin Bridge Alternative and the Warm Springs Reservation Alternative), and make recommendations on how to lessen or avoid impacts on affected resources.

The draft EIS will analyze and disclose the environmental effects of the proposed pipeline route and alternatives. The draft EIS will be mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 7). Typically the draft EIS is issued for a 45-day comment period; however, due to the Forest Service and BLM Plan Amendments, a 90-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this Notice.

**Forest Service Plan Amendments**

The EIS will examine the proposed action and alternatives that require administrative or other actions by other Federal agencies. The U.S. Department of Agriculture Forest Service has identified the possible need to amend the existing Land and Resource Management Plan for the Crooked River National Grassland. The Northern variation of the Warm Springs Reservation Alternative (*see* Appendix 3) is not within a designated utility corridor. If this route were selected, an amendment designating this route across the National Grassland as a utility corridor in the management plan may be necessary. The Southern variation of the Warm Springs Reservation Alternative (*see* Appendix 3) follows an existing designated utility corridor in the management plan and amendments may not be necessary if this route were selected.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the Maupin Bridge Alternative and Warm Springs Reservation Alternative. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen the environmental impact of the Maupin Bridge Alternative and Warm Springs Reservation Alternative. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in you comments so that they will be received in Washington DC on or before July 13, 2009.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference Project Docket No. CP09–035–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

1. You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

2. You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

3. You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of your comments for the attention of OEP/DG2E/Gas Branch, PJ–11.2.
- Reference Docket No. CP09–035–000 on the original and both copies.

The public scoping meetings (dates, times, and locations listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of the meetings will be generated so that your comments can be accurately recorded.

**Becoming an Intervenor**

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Further instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site (*http://www.ferc.gov*).

The Notice of Application for this proposed project issued on December 29, 2008 identified the date for the filing of interventions as January 30, 2009. However, affected landowners and parties with environmental concerns may be granted late intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

**Environmental Mailing List**

Everyone who provides comments on this Supplemental Notice will be retained on the mailing list. If you do not want to send comments at this time but still want to stay informed and receive copies of the draft and final EISs, you must return the Mailing List Retention Form (Appendix 4). Also, indicate on the form your preference for receiving a paper version of the EIS in lieu of an electronic version of the EIS on CD–ROM. If you have previously submitted comments or returned a Mailing List Retention Form you are already on our mailing list and do not

need to resubmit comments or a Mailing List Retention Form.

**Additional Information**

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–35). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as Orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Palomar has established a Web site for this Project at *http://www.palomargas.com/project.html.* The Web site includes a Project overview, timeline, safety and environmental information, and answers to frequently asked questions. You can also request additional information by emailing Palomar directly at *info@palomargas.com* or writing to: Palomar Gas Transmission, 1400 SW. Fifth Avenue, Suite 900, Portland, Oregon 97225.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14199 Filed 6–16–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; ER08–1178–000; EL08–88–000; ER09–241–000]**

### California Independent System Operator Corporation; Notice of FERC Staff Attendance

June 10, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on June 11, 2009, members of its staff will participate in a market issues teleconference to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconference are available on the CAISO's Web site, *http://www.caiso.com.*

Sponsored by the CAISO, the teleconference is open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconference may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–14196 Filed 6–16–09; 8:45 am]

BILLING CODE 6717–01–P

## FEDERAL ENERGY REGULATORY COMMISSION

### Sunshine Act Meeting Notice

June 11, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** June 18, 2009, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note:** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

**949th—Meeting**

REGULAR MEETING

[June 18, 2009, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **ADMINISTRATIVE** | |
| A–1 | AD02–1–000 | Agency Administrative Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| | **ELECTRIC** | |
| E–1 | OMITTED | |
| E–2 | RM04–7–006 | Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities. |
| E–3 | ER09–1039–000 | Southwest Power Pool, Inc. |
| E–4 | RM09–8–000 | Revised Mandatory Reliability Standards for Interchange Scheduling and Coordination. |
| E–5 | RM06–22–006 | Mandatory Reliability Standards for Critical Infrastructure Protection. |
| E–6 | ER09–1004–000<br>ER09–1004–001 | Southwest Power Pool, Inc. |
| E–7 | OA09–15–000 | Golden Spread Electric Cooperative, Inc. |
| E–8 | OA08–46–002<br>OA07–36–003 | South Carolina Electric & Gas Company. |

REGULAR MEETING—Continued

[June 18, 2009, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| E–9 | OA08–27–001 | E.ON U.S. LLC. |
| E–10 | OA08–20–001 | Tampa Electric Company. |
| | OA08–20–002 | |
| | OA08–22–002 | Florida Power Corporation. |
| | OA08–29–001 | Florida Power & Light Company. |
| | NJ08–6–001 | Orlando Utilities Commission. |
| E–11 | OA08–36–003 | Cleco Power LLC. |
| E–12 | NJ08–4–001 | East Kentucky Power Cooperative, Inc. |
| E–13 | OA08–59–003 | Entergy Services, Inc. |
| | OA08–59–004 | |
| E–14 | EL09–29–000 | NorthWestern Corporation. |
| E–15 | OMITTED | |
| E–16 | EL09–30–000 | Mountain States Transmission Intertie, LLC and NorthWestern Corporation. |
| E–17 | EL09–42–000 | Dartmouth Power Associates Limited Partnership v. ISO New England Inc. |
| E–18 | OA08–50–000 | Duke Energy Carolinas, LLC. |
| | OA08–50–001 | |
| | OA08–51–000 | Progress Energy Carolinas, Inc. |
| | OA08–51–002 | |
| E–19 | EL00–95–000 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and California Power Exchange Corporation. |
| | EL00–95–224 | |
| | EL00–98–000 | Investigation of Practices of the California. |
| | EL00–98–209 | Independent System Operator Corporation and the California Power Exchange Corporation. |
| E–20 | EL00–95–182 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| | EL00–98–168 | Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| E–21 | EL00–95–172 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| | EL00–95–181 | |
| | EL00–95–190 | |
| | EL00–98–158 | Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| | EL00–98–167 | |
| | EL00–98–175 | |
| E–22 | EL00–95–203 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| | EL00–98–188 | Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation. |
| E–23 | ER08–1318–000 | Pacific Gas and Electric Company. |
| E–24 | ER08–1194–000 | Columbia Energy LLC. |
| | ER08–1194–001 | |
| | ER08–1194–002 | |
| E–25 | ER09–197–001 | ISO New England Inc. |
| E–26 | EL08–67–001 | Maryland Public Service Commission, Delaware Public Service Commission, Pennsylvania Public Utility Commission, New Jersey Board of Public Utilities, Public Power Association of New Jersey, Maryland Office of the People's Counsel, Office of the People's Counsel of the District of Columbia, Southern Maryland Electric Cooperative, Inc., Blue Ridge Power Agency, Allegheny Electric Cooperative, Inc., Office of the Ohio Consumers' Counsel, New Jersey Department of the Public Advocate, Division of Rate Counsel, Pennsylvania Officer of Consumer Advocate, PJM Industrial Customer Coalition, American Forest and Paper Association, Portland Cement Association, Duquesne Light Company, and United States Department of Defense and other affected Federal Executive Agencies v. PJM Interconnection, L.L.C. |
| E–27 | OA08–37–001 | Southern Company Services, Inc. |
| | OA08–37–002 | |
| E–28 | OA08–36–002 | Cleco Power LLC. |
| E–29 | ER08–1419–001 | Southwest Power Pool, Inc. |
| | ER08–1419–002 | |
| E–30 | OMITTED | |
| E–31 | OMITTED | |
| **GAS** | | |
| G–1 | OMITTED | |
| G–2 | RP09–38–002 | Sabine Pipe Line LLC. |

REGULAR MEETING—Continued

[June 18, 2009, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| G–3 | RP09–441–000 | Transcontinental Gas Pipe Line Company, LLC. |
| **HYDRO** | | |
| H–1 | P–2030–186 | Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon. |
| H–2 | P–2545–091<br>P–12606–000 | Avista Corporation. |
| H–3 | DI09–4–001 | Borough of High Bridge, New Jersey. |
| H–4 | OMITTED | |
| H–5 | OMITTED | |
| **CERTIFICATES** | | |
| C–1 | OMITTED | |
| C–2 | CP08–458–000 | UGI LNG, Inc. |
| C–3 | CP09–59–000 | Dominion Cove Point LNG, LP. |
| C–4 | CP01–415–019 | East Tennessee Natural Gas, LLC. |
| C–5 | CP09–22–000 | Atmos Pipeline and Storage, LLC. |
| C–6 | CP09–66–000 | Northwest Pipeline GP. |
| | CP09–67–000 | Parachute Pipeline LLC. |
| C–7 | CP07–39–000 | Columbia Gas Transmission Corporation. |
| C–8 | CP09–47–000 | Oasis Pipeline LP, and Oasis Pipe Line Company Texas L.P. |

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–14193 Filed 6–16–09; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–8421–6]**

## Access to Confidential Business Information by Flatirons Solutions Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized contractor Flatirons Solutions Corporation (Flatirons) of Boulder, CO, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than June 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

*For technical information contact:* Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to you if are conducting, or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://*

*www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket Facility is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

## II. What Action Is the Agency Taking?

Under Contract Number GS–35F–0446N, Order Number EP09H001146, contractor Flatirons of 747 Table Mesa Drive, Suite 200, Boulder, CO will assist the Office of Pollution Prevention and Toxics (OPPT) in developing the capability to scan documents into Documentum repository. They will also assist by providing consulting and services in the configuration of the Captiva Scanner and its integration with Documentum repository.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS–35F–0446N, Order Number EP09H001146, Flatirons will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Flatirons personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Flatirons access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Flatirons will be authorized access to TSCA CBI at EPA Headquarters, provided they comply with the provisions of the EPA TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until August 20, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Flatirons personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

## List of Subjects

Environmental protection, Confidential business information.

Dated: June 8, 2009.

**Matthew Leopard,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E9–13852 Filed 6–16–09; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2004–0008; FRL–8919–5]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; EPA ICR No. 1487.08, OMB Control No. 2050–0179

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 30, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2004–0008, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 28221 T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2004–0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**FOR FURTHER INFORMATION CONTACT:** David Yogi, Office of Solid Waste and Emergency Response, Assessment and Remediation Division, (5204 P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–347–8835; *fax number:* 703–603–9112; *e-mail address: yogi.david@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2004–0008, which is available for online viewing at

*www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

Docket ID No. EPA–HQ–SFUND–2004–0008.

*Affected entities:* Entities potentially affected by this action are States, federally-recognized Indian tribes and Tribal Consortia, and political subdivisions which apply to EPA for financial assistance under a Superfund cooperative agreement or a Superfund State Contract.

*Title:* Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

*ICR numbers:* EPA ICR No. 1487.09, OMB Control No. 2050–0179.

*ICR status:* This ICR is currently scheduled to expire on December 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for State, federally-recognized Indian tribal governments, and political subdivision response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management under this regulation. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how federal funds are being utilized. EPA requires this information to meet its federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' and under 40 CFR part 35, ''State and Local Assistance.'' 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.38 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to

respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 568.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.7.

*Estimated total annual burden hours:* 4,952.64.

*Estimated total annual costs:* $128,466.67 (This includes only the estimated burden cost of $128,466.67 and no costs for capital investment or maintenance and operational costs.)

**Are There Changes in the Estimates From the Last Approval?**

There is a decrease of 883 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a decrease in the estimated number of respondents from the previous ICR.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 8, 2009.

**Phyllis Anderson,**

*Acting Director, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation.*

[FR Doc. E9–14242 Filed 6–16–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2009–0313; FRL–8919–8]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Critical Public Information Needs During Drinking Water Emergencies (New); EPA ICR No. 2322.01, OMB Control No. 2080–NEW

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 17, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0313 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ord.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Research & Development Docket, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0313. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Scott Minamyer, Environmental Protection Agency, Mail Code NG–16, Environmental Protection Agency, 26 West Martin Luther King Drive; *telephone number:* 513–569–7175; *fax number:* 513–487–2559; *e-mail address: minamyer.scott@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2009–0313, which is available for online viewing at *www.regulations.gov,* or in person viewing at the ORD Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the ORD Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What Feedback Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collection of information on those who are to respond

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

*Affected entities:* Entities potentially affected by this action are municipal water utility managers and members of the public participating in focus groups.

*Title:* Critical Public Information Needs during Drinking Water Emergencies (New)

*ICR numbers:* EPA ICR No. 2322.01, OMB Control No. 2080–NEW.

*ICR status:* This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA is collecting this information as part of a formative research study to identify critical information the public will need from water utilities and other decision-makers during a crisis event impacting drinking water. The research will probe consumers' and water sector professionals' beliefs, opinions, and knowledge about water security risks to assist public officials in planning effective crisis communication strategies for such emergencies. Good communication can rally support, calm fears, provide needed instructions, and encourage cooperative behaviors.

Study participants will also provide feedback on the effectiveness of draft sample messages previously developed by EPA in consultation with subject matter experts from water utilities, public health, emergency response, law enforcement, and water trade/professional organizations. Voluntary participants for this one-time study will include water utility managers, public information officers, and members of the public who consume drinking water supplied by water utilities. Confidentiality of responses from respondents will be assured by using an independent contractor to collect the information, enacting procedures to prevent unauthorized access to respondent data, and preventing public disclosure of the responses of individual participants.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.7 hours per response. Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:*

*Estimated total number of potential respondents:* 52 water utility professional staff and 128 members of the public participating in focus group discussions.

*Frequency of response:* Once.

*Estimated total average number of burden hours for each respondent:* 1 hour for water utility professional staff and 2 hours for members of the public participating in focus group discussions.

*Estimated total annual respondent burden hours:* 308 hours.

*Estimated total annual costs:* $1,380.46. This includes an estimated burden cost of $1,380.46 for participating water utility professional staff and $0 for members of the public participating in focus group discussions and an estimated cost of $0 for capital investment or maintenance and operational costs.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: May 29, 2009.

**Cynthia Sonich-Mullin,**

*Acting Director, National Homeland Security Research Center, Office of Research and Development.*

[FR Doc. E9–14239 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8914–7]**

## Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Four New Equivalent Methods

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the designation of four new equivalent methods for monitoring ambient air quality.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, four new equivalent methods for measuring concentrations of $PM_{2.5}$ in the ambient air.

**FOR FURTHER INFORMATION CONTACT:** Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–5691, e-mail: *Kaushik.Surender@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of four new equivalent methods for measuring concentrations of $PM_{2.5}$ in the ambient air. These designations are made under the provisions of 40 CFR Part 53, as amended on October 17, 2006 (71 FR 61271).

Two of the new equivalent methods for $PM_{2.5}$ are automated methods (analyzers) utilizing the measurement principle based on filter sample collection and analysis by an inertial micro-balance that provides direct mass measurements in near real time. Separation of the $PM_{2.5}$ particle size range is by a cyclone in the first method and by a virtual impactor in the second method. These two newly designated equivalent methods are identified as follows:

EQPM–0609–181, ''Thermo Scientific TEOM® 1400a Ambient Particular Monitor with Series 8500C FDMS™,'' configured for $PM_{2.5}$ with the US EPA $PM_{10}$ inlet specified in 40 CFR Part 50, Appendix L, Figs. L–2 thru L–19, followed by a BGI Inc. Very Sharp Cut Cyclone (VSCC™) particle size separator, operated with a total actual flow of 16.67/min., loaded with Series FDMS (Filter Dynamics Measurement System) 8500 module operating software and an FDMS kit, and operated with firmware version 3.20 and later, according to the Thermo Scientific TEOM® 1400a Ambient Particular Monitor with Series 8500C FDMS™ operating manual.

EQPM–0609–182, ''Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particular Monitor with FDMS®,'' configured for dual filter sampling of fine ($PM_{2.5}$) and coarse particles using the US EPA $PM_{10}$ inlet specified in 40 CFR Part 50, Appendix L, Figs. L–2 thru L–19 and a virtual impactor, with a total flow rate of 16.67 L/min, fine sample flow of 3 L/min, and coarse sample flow rate of 1.67 L/min, and operating with firmware version 1.50 and later, operated with or without external enclosures, and operated in accordance with the Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particulate Monitor Instruction Manual (designated for $PM_{2.5}$ measurements only).

The other two new equivalent methods for $PM_{2.5}$ are automated methods (analyzers) utilizing the measurement principle based on cyclonic separation of the $PM_{2.5}$ particle size range with filter sample collection and analysis by beta attenuation. The newly designated equivalent methods are identified as follows:

EQPM–0609–183, ''Thermo Scientific FH62C14–DHS Continuous Ambient Particle Monitor'' operated at a flow rate of 16.67 liters per minute for 24-hour average measurements configured for $PM_{2.5}$ with a louvered $PM_{10}$ size selective inlet as specified in 40 CFR Part 50, Appendix L, Figs. L–2 through L–19, a $PM_{2.5}$ BGI Inc. Very Sharp Cut Cyclone (VSCC™) particle size separator, inlet connector, sample tube, DHS heater with 35% RH threshold, mass foil kit, GF10 filter tape, 8-hour filter change, and operational calibration and servicing as outlined in the FH62C14–DHS Continuous Ambient Particulate Monitor operating manual.

EQPM–0609–184, ''Thermo Scientific Model 5030 SHARP Monitor'' operated at a flow rate of 16.67 liters per minute for 24-hour average measurements configured for $PM_{2.5}$ with a louvered $PM_{10}$ size selective inlet as specified in 40 CFR Part 50, Appendix L, Figs. L–2 through L–19, a $PM_{2.5}$ BGI Inc. Very Sharp Cut Cyclone (VSCC™) particle size separator, inlet connector, sample tube, DHS heater with 35% RH threshold, mass foil kit, GF10 filter tape, nephelometer zeroing kit, 8-hour filter change, and operational calibration and servicing as outlined in the Model 5030 SHARP instructional manual.

Applications for equivalent method determinations for these candidate methods were received by the EPA on June 30, 2008 and July 14, 2008. The monitors are commercially available from the applicant, Thermo Fisher Scientific, Air Quality Instruments, Environmental Instruments Division, 27 Forge Parkway, Franklin, MA 02038.

Test analyzers representative of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR Part 53 (as amended on October 17, 2006). After reviewing the results of those tests and other information submitted by the applicant in the respective applications, EPA has determined, in accordance with Part 53, that these methods should be designated as equivalent methods. The information submitted by the applicant in the respective applications will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designated method description (see the identifications of the methods above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program'' EPA–454/B–08–003, December, 2008 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part

53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: June 1, 2009.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

[FR Doc. E9–14231 Filed 6–16–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0186; FRL–8410–7]**

## Clomazone and Fomesafen Registration Review Draft Ecological Risk Assessments; Notice of Availability; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of April 22, 2009, concerning the availability of EPA's draft ecological risk assessments for the registration review of both clomazone and fomesafen and opened a public comment period on these documents. This document extends the comment period for 60 days, from June 22, 2009 to August 21, 2009.

**DATES:** Comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0186 (74 FR 18374), must be received on or before August 21, 2009.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of April 22, 2009 (74 FR 18374).

**FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact*: The chemical review manager identified in the **Federal Register** document of April 22, 2009 for the pesticide of interest.

*For general questions on the registration review program, contact:* Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; e-mail address: *costello.kevin@epa.gov*.

*For general questions on OPP's Endangered Species Protection Program contact*: Arty Williams, Environmental Fate and Effects Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 305–7695; fax number (703) 308–4776; e-mail address: *williams.arty@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** of April 22, 2009, 74 FR 18374 (FRL–8410–7). In that document, EPA announced the availability of the draft ecological risk assessments for the registration review of both clomazone and fomesafen and opened a public comment period on these documents. EPA is hereby extending the comment period, which was set to end on June 22, 2009, to August 21, 2009.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the April 22, 2009 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Registration Review, Pesticide pests.

Dated: June 10, 2009.

**Richard P. Keigwin, Jr.,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E9–14227 Filed 6–16–09; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2007–1145; FRL–8916–4]**

## Draft Risk and Exposure Assessment Report for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft report for public review and comment.

**SUMMARY:** On or about June 5, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled ''Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second Draft.'' The purpose of this draft document is to convey the approach taken to assess environmental exposures to ambient oxides of nitrogen and sulfur and to characterize associated public welfare risks, as well as to present the results of those assessments.

**DATES:** Comments on the above report must be received on or before July 17, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries

are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Rea, Office of Air Quality Planning and Standards (Mailcode C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *rea.anne@epa.gov*; telephone: 919–541–0053; fax: 919–541–0840.

## General Information

### A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**SUPPLEMENTARY INFORMATION:** Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for oxides of nitrogen ($NO_X$) and oxides of sulfur ($SO_X$). Because $NO_X$, $SO_X$, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with oxides of nitrogen and oxides of sulfur. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the Clean Air Scientific Advisory Committee (CASAC) and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of its review of the secondary NAAQS for $NO_X$ and $SO_X$, EPA is preparing an assessment of exposures and characterization of risks for adverse ecological effects associated with atmospheric $NO_X$ and $SO_X$ deposition. A draft plan describing the proposed approaches to assessing ecological exposures and effects is described in the draft document, *Draft Scope and Methods Plan for Risk/Exposure Assessment: Secondary NAAQS Review for Oxides of Nitrogen and Oxides of Sulfur.* This document was released for

public review and comment in March 2008 and was the subject of a consultation with the CASAC on April 2 and 3, 2008. Comments received from that consultation were considered in developing the document titled ''Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft,'' which was released for public review and comment in August 2008. This document was the subject of a CASAC review on October 1–2, 2008. Comments received from that review have been considered in developing the document titled, ''Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second Draft,'' which is being released at this time.

The second draft risk and exposure assessment for the secondary $NO_X/SO_X$ NAAQS review released at this time conveys the approach taken to assess ecological effects due to the deposition of ambient $NO_X$ and $SO_X$, and present the results of these analyses. This draft document will be available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html.*

The EPA is soliciting advice and recommendations from the CASAC and public comments by means of a review of the draft document at an upcoming public meeting of the CASAC scheduled for July 22–23, 2009 in Research Triangle Park, NC. A separate **Federal Register** notice will provide additional details about this meeting and the process for participation. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a final risk and exposure assessment report.

Dated: June 4, 2009.

**Jenny N. Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E9–14238 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8919–6; Docket ID No. EPA–HQ–ORD–2009–0210]**

## Draft Toxicological Review of 1,4-Dioxane: In Support of the Summary Information in the Integrated Risk Information System (IRIS); Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** The EPA published a notice in the **Federal Register** of Tuesday, June 9, 2009 (74 FR, 27313–27315), announcing a listening session for the external review draft document titled, ''Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/005). The notice contained incorrect dates.

**FOR FURTHER INFORMATION CONTACT:** For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (NCEA), (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov*.

### Correction

In the **Federal Register** of June 9, 2009, in FR Doc. FRL–8914–2, on page 27314, in the second column, correct the Dates and Addresses captions to read:

**DATES:** The listening session on the draft IRIS health assessment for 1,4-dioxane will be held on Monday, July 6, 2009, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you wish to make a presentation at the listening session, you should register by Monday, June 29, 2009, and indicate that you wish to make oral comments at the session, and indicate the length of your presentation. At the time of your registration, please indicate if you require audio-visual aid (*e.g.*, lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time will allow, then the time limit for each presentation will be adjusted accordingly. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by Monday, June 29, the listening session will be cancelled. EPA will notify those registered to attend of the cancellation.

**ADDRESSES:** The listening session on the draft 1,4-dioxane assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend the listening session, register by Monday, June 29, 2009, via the Internet at *http://epa.versar.com/14dioxane/listening*. You may also register via e-mail: *ssarraino@versar.com* (subject line: 1,4-Dioxane Listening Session), by phone (703) 750–3000, ext. 316 or toll free at 1–800–2–VERSAR (1–800–283–7727), (ask for the 1,4-Dioxane listening session coordinator, Stephanie Sarraino), or by faxing a registration request to (703) 642–6954 (please reference the ''1,4-Dioxane Listening Session'' and include your name, title, affiliation, full address and contact information).

Dated: June 11, 2009.

**Rebecca Clark,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E9–14246 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0855; FRL–8420–5]**

## Citric Acid; Antimicrobial Registration Review Final Work Plan and Proposed Registration Review Decision; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's final work plan and proposed registration review decision for the pesticide citric acid and opens a public comment period on the proposed decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**DATES:** Comments must be received on or before August 17, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0855, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2008–0855. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** *For pesticide-specific information, contact*: Heather Garvie, Chemical Review Manager, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 305–5620; e-mail address: *garvie.heather@epa.gov*.

*For general information on antimicrobials in the registration review program, contact*: Diane Isbell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; fax number: (703) 308–8481; e-mail address: *isbell.diane@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What Action is the Agency Taking?*

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision for the pesticide citric acid (Registration Review Case 4024) and opens a 60–day public comment period on the proposed decision. Citric acid is a food-contact and non-food contact antimicrobial pesticide used in many products for residential and public access premises (e.g., kitchen counter tops, bathroom shower stalls, toilets, utensils, kitchen cutting boards, diaper pails, changing tables, garbage cans, pet area, cafeterias, and doctor's offices) and as a disinfectant fruit and vegetable wash, sanitizer, virucide, and germicide. It is also an inert ingredient in other pesticide products. In addition, citric acid is characterized by low toxicity, is biodegradable, and is found extensively in nature.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a summary document, containing a preliminary work plan, for public comment. Because no comments were received, and because the Agency required no further risk assessments to complete registration review of this case, the final work plan and proposed decision were combined into a single document.

The documents in the initial docket described the Agency's rationales for

not conducting additional risk assessments for the registration review of citric acid. This proposed registration review decision continues to be supported by those rationales included in documents in the initial docket. Following public comment, the Agency will issue a final registration review decision for products containing citric acid.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60–day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for citric acid. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket and regulations.gov. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of citric acid are provided at: *http://www.epa.gov/oppsrrd1/registration_review/citric_acid/index.htm*.

*B. What is the Agency's Authority for Taking this Action?*

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Antimicrobials, Citric acid, Pesticides and pests.

Dated: June 4, 2009.

**Betty Shackleford,**

*Acting Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E9–14249 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0333; FRL–8420–4]**

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comments must be received on or before July 17, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0333, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2009–0333. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*File Symbol*: 432-RLNE, 432-RLNG, 432-RLNU. *Applicant*: Bayer Environmental Science, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. *Product name*: Penta-termanone WP, Premise® Plus 75WP, Penta-Termanone™ Technical. *Active ingredient*: 0.041% Penta-Termanon; 75% Imidacloprid, 0.027% Penta-Termanon; 100% Penta-Termanone. *Proposal classification/Use*: Termiticide.

## List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 9, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–14236 Filed 6–16–09; 8:45 am]

**BILLING CODE 6560–50–S**

# FEDERAL ELECTION COMMISSION

## Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**CANCELLATION:** The Open Meeting scheduled for Thursday, May 21, 2009, was cancelled.

**DATE AND TIME:** Thursday, June 18, 2009, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting Will Be Open To The Public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

**DRAFT ADVISORY OPINION 2009–11:** Senator John Kerry and the John Kerry for Senate Committee, by Marc E. Elias, Esq. and Kate S. Keane, Esq.

Report of the Audit Division on the Ciro D. Rodriguez for Congress Committee.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E9–14047 Filed 6–16–09; 8:45 am]

**BILLING CODE 6715–01–M**

# 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 July 10, 2009.

**A. Federal Reserve Bank of Chicago** (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Van Financial Corp., Breda, Iowa;* to become a bank holding company by acquiring at least 80 percent of Breda Savings Bank, Breda, Iowa.

**B. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. BCC Bancshares, Inc., Hardin, Illinois;* to become a bank holding company by acquiring 100 percent of Bank of Calhoun County, Hardin, Illinois.

Board of Governors of the Federal Reserve System, June 12, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–14202 Filed 6–16–09; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–09–0604]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

School Associated Violent Death Surveillance System (0920–0604)—Reinstatement—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to maintain a system for the surveillance of school-associated homicides and suicides. The system will rely on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 2006, over 3,200 school aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However, whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths during the 1992–99 academic years to establish the true extent of this highly visible problem. Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

The system will draw cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators will review public records and published press reports concerning each school-associated violent death. For each identified case, investigators will also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school support staff) who are knowledgeable about the case in question. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| School Officials | 35 | 1 | 60/60 | 35 |
| Police Officials | 35 | 1 | 60/60 | 35 |
| Total | | | 70 | |

Dated: June 11, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–14224 Filed 6–16–09; 8:45 am]

BILLING CODE 4163–18–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.

**Project: Garrett Lee Smith Campus Case Studies Funded Through the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention Programs—New**

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) is conducting up to six campus case studies with Garrett Lee Smith Memorial (GLS) Suicide Prevention and Early Intervention Campus Program grantees. The GLS Campus Case Studies (CCS) build upon campuses' existing local evaluation being implemented and funded through the GLS grant program. The goal of the CCS is to understand how a public health approach is successfully applied as a model for campus suicide prevention efforts, and will explore, in a systematic manner: The suicide prevention related infrastructures and supports (*e.g.,* clinical and non-clinical) that exist on up to six selected GLS-funded campuses; the various student-level factors that are related to suicide prevention efforts (*e.g.,* protective factors, coping strategies, social norms, and facilitators and barriers to student access and receipt of behavioral healthcare); campus interdepartmental collaboration and the relationship between various efforts to promote student mental health and wellness; and the extent to which the campus infrastructures and supports promote and address these factors.

The data collected through this project will contribute to the knowledge base regarding a successful model for suicide prevention that integrates multiple prevention programs targeting risk and protective behaviors which place students at risk for a host of negative mental and physical health outcomes correlated with suicide, including violence, stress, untreated depression and mental illness, and academic failure. The strategies targeting various populations on campus will also be discussed, as well as the campus policies and procedures which facilitate campus efforts related to mental health promotion and crisis response. The CCS design includes three data collection strategies: (1) Case study key informant interviews (CSIs); (2) focus groups with students, faculty, and staff; and (3) an Enhanced Module to the OMB-approved Suicide Prevention Exposure, Awareness and Knowledge Survey—Student Version (OMB No. 0930–0286) administered to a sample of students. Data collection is planned to commence in fall 2008. CCS activities will be implemented on up to six GLS-funded campuses.

The following describes the specific data collection activities and the data collection instruments to be used, followed by a summary table of the number of respondents and the respondent burden:

- *Enhanced Module for the SPEAKS.* The Enhanced Module will be added to the OMB-approved Suicide Prevention Exposure, Awareness, and Knowledge Survey (SPEAKS)—Student Version (OMB No. 0930–0286). The Enhanced Module examines coping strategies, help-seeking behaviors, awareness of available mental health services, and risk and protective factors across the student population. Questions include the availability of resources to provide assistance to those at risk for suicide; the types of coping strategies they use when experiencing stress; from whom, if anyone, they would seek help; if they have dealt with mental health issues, sought help, and experienced trauma; and their use of protective factors. The Enhanced Module is Web-based and includes multiple-choice, Likert-scale, and yes/no questions. The Enhanced Module includes 16 items and will take approximately 10 minutes to complete. The Enhanced Module will be administered at each campus once in conjunction with the SPEAKS—Student Version to a random sample of 200 students.
- *Student Focus Group Moderator's Guide.* This component will assess student risk and protective factors related to mental health, help-seeking behaviors, and knowledge of prevention activities on campus and their perceived effectiveness. This will help researchers more fully understand student-level factors in relation to population-level factors addressed by the Enhanced Module for the SPEAKS. Questions address stressors that different groups of students face while in college, barriers to seeking help, attitudes and stigma related to seeking help, and the accessibility of the campus counseling center. Six of the following seven groups of students will participate in focus groups on each campus, as decided by the campus: (1) First-year students, (2) athletes, (3) international students, (4) Lesbian, Gay, Bisexual, and Transgender (LGBT) students, (5) Greek life students, (6) graduate students, and (7) residential advisors/peer educators. Recruitment will be conducted by campus project staff. Focus groups will include a maximum of 9 students. Thus, the total number of student focus group participants will not exceed 324. Groups will last approximately 90 minutes.
- *Faculty/Staff Focus Group Moderator's Guide.* The faculty and staff focus groups will assess the campus' approach to prevention, attitudes and stigma around student mental health and wellness on campus, campus infrastructure supports for students who need mental health help, and the

general campus climate around mental health and wellness. Faculty and staff will also describe their knowledge of prevention activities on campus and their perceived effectiveness of these efforts. Local campus staff will recruit appropriate respondents for the faculty and staff focus groups to include a maximum of 9 respondents per group. The total number of participants will not exceed 162 and groups will last approximately 90 minutes.

• *Case Study Key Informant Interviews (7 versions).* The Case Study Key Informant Interviews (CSIs) include 7 qualitative interview versions: (1) Administrator, (2) Counseling Staff, (3) Coalition Member—Faculty, (4) Prevention Staff, (5) Case Finder, (6) Campus Police, and (7) Student Leader. Local project staff will be responsible for identifying appropriate respondents for each CSI version and scheduling the interview to occur during site visits by the case study team. A total of 14 interviews will be conducted during each campus site visit (a total of up to 192 interviews). The case study team from Macro International Inc. will be responsible for administering the interviews and is trained in qualitative interviewing. Fourteen individuals from each of the campus sites will be selected as key informants to participate in the CSIs in the first and third stages of the GLS Campus Case Studies, for a total of 64 respondents. Questions on the CSIs include whether respondents are aware of suicide prevention activities, what the campus culture is, related to suicide prevention, and what specific efforts are in place to prevent suicide among the campus population. Items are formatted as open-ended and semi-structured questions. The CSIs include 16 to 21 items and will take approximately 60 minutes to complete. On the second site visit, the case study team will incorporate preliminary findings from the case studies in the interviews, which may be modified to some extent to collect more comprehensive information and gather feedback from local key informants surrounding the context of the preliminary findings. The CSIs for the second site visit will last 60 minutes.

The average annual respondent burden is estimated below. This project is scheduled to be completed in 12 months; thus, the table reflects the total burden for one year, the project length. The estimate reflects the total annual respondents for the project (at which time the CCS would conclude), the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average burden.

TOTAL AND ANNUAL AVERAGES: RESPONDENTS, RESPONSES AND HOURS

| Measure name | Number of respondents | Number of responses per respondent | Hours/ response | Response burden |
|---|---|---|---|---|
| Enhanced Module | 1,200 | 1 | 0.17 | 204 |
| Focus Group—Student Version | 324 | 1 | 1.5 | 486 |
| Focus Group—Faculty Version | 108 | 1 | 1.5 | 162 |
| Focus Group—Staff Version | 54 | 1 | 1.5 | 81 |
| Interview—Student Leader Version | 12 | 1 | 1 | 12 |
| Interview—Case Finder Version | 6 | 1 | 1 | 6 |
| Interview—Faculty Version | 12 | 1 | 1 | 12 |
| Interview—Campus Police Version | 12 | 1 | 1 | 12 |
| Interview—Counseling Staff Version | 12 | 1 | 1 | 12 |
| Interview—Prevention Staff Version | 18 | 1 | 1 | 18 |
| Interview—Administrator Version | 12 | 1 | 1 | 12 |
| Total | 1,770 | | | 1,017 |

Written comments and recommendations concerning the proposed information collection should be sent by July 17, 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: June 8, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–14218 Filed 6–16–09; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0648]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; PDUFA Pilot Project Proprietary Name Review

**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 July 17, 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–NEW and the title ''PDUFA Pilot Project Proprietary Name Review.'' Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, 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.

**PDUFA Pilot Project Proprietary Name Review**

In the **Federal Register** of October 7, 2008 (73 FR 58604), FDA announced the availability of a concept paper entitled ''PDUFA Pilot Project Proprietary Name Review.'' The concept paper describes how pharmaceutical firms may evaluate proposed proprietary names and submit the data generated from those evaluations to FDA for review under a pilot program to begin by the end of fiscal year (FY) 2009.

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85, 121 Stat. 823), which includes the reauthorization and expansion of the Prescription Drug User Fee Act (PDUFA IV). As part of the reauthorization of PDUFA IV, FDA committed to certain performance goals, including the goal of using user fees to implement various measures to reduce, among other things, medication errors related to look-alike and sound-alike product proprietary names. FDA also agreed to develop and implement a voluntary pilot program to enable pharmaceutical firms participating in the pilot to evaluate proposed proprietary names and to submit the data generated from those evaluations to the FDA for review. The concept paper is intended to help pharmaceutical firms choose appropriate proprietary names for their drug and biological products before submitting marketing applications to FDA and describes how pharmaceutical firms may use ''best practices'' to carry out their own proprietary name reviews and provide FDA with the data that result from those reviews. The goals of the concept paper and the voluntary pilot program are to minimize the use of names that are misleading or that are likely to lead to medication errors, to make FDA's marketing application review more efficient, and to make regulatory decisions more transparent. The concept paper explains how an applicant who chooses to participate in the pilot program could assess a proposed proprietary name for safety (i.e., potential for medication errors) and, at the applicant's option, for promotional implications, before marketing application approval and subsequent marketing of a drug or biological product in the United States, and how to submit the results of the assessment for review under the pilot program.

The information described in the concept paper and the data collected may not be submitted to FDA until OMB has approved the information collection associated with the pilot program. After OMB approval, FDA will accept requests to register for the pilot program. FDA will announce OMB's approval and other details on participating in the pilot program in the **Federal Register**. FDA expects that the pilot program will begin by the end of FY 2009.

The information collection that will result from the voluntary pilot program, as described in the concept paper, consists of the following:

1. Applicants should contact FDA to register and indicate the approximate date of their proprietary name submission, as described in the concept paper and as will be described in more detail when FDA announces OMB's approval and the specific information on participating in the pilot program.

2. Applicants should contact the appropriate FDA center 120 days prior to the intended date of the proposed proprietary name submission to discuss the specific details of the planned submission. Applicants should communicate with the Director in the Division of Medication Error Prevention and Analysis in the Office of Surveillance and Epidemiology in the Center for Drug Evaluation and Research, or the Branch Chief at the Advertising and Promotion Labeling Branch of the Division of Case Management in the Office of Compliance and Biologics Quality in the Center for Biologics Evaluation and Research, concerning any questions about their proposed submissions. For prescription products, applicants should inform the appropriate center at the 120-day pre-submission discussion if they plan to use alternative or additional methods to evaluate the safety of their proposed proprietary name. For nonprescription products, sponsors should discuss with FDA different protocols that could be used for their specific drug products prior to the submission of the proprietary name.

3. Applicants should submit two separate sets of product name-related information to enable parallel reviews by FDA as follows: (a) A comprehensive evaluation of the proposed proprietary name including the information and data listed in Appendix B (''Proposed Template For A Pilot Program Submission'') of the concept paper; and (b) the proprietary name information that they would ordinarily submit under FDA's current practice. (Note: The proprietary name information ordinarily submitted under FDA's current practice is not included in the estimates in table 1 of this document because this information collection is already approved under OMB Control Numbers 0910–0001 and 0910–0338).

4. After review of the proprietary name submissions, and if FDA informs the applicant that the proposed first-choice proprietary name is unacceptable, the applicant should confirm in writing that it would like its originally submitted second-choice name reviewed, or the applicant should submit an alternative second-choice name along with the information described in the concept paper. At that time, FDA will begin review of the second-choice name. If an applicant has submitted a complete proprietary name analysis for the second-choice name, the responsible center will use discretion to determine whether to review the applicant's analysis in addition to conducting its own analysis using the traditional approach. Although FDA would ideally review the applicant's completed proprietary name analysis for the second-choice name, factors such as staffing and timelines will be used in making this determination.

**Comment and Related Issues**

In the **Federal Register** of December 23, 2008 (73 FR 78813), FDA published a 60-day notice requesting comments on the information collection. We received one comment, which raised the following issues:

1. The comment stated that the focus of the Pilot Program should be on safety evaluations for drug products that will be marketed in the United States. The comment said that trademark clearance from both the legal and regulatory perspectives is often conducted by sponsors to support the geographic markets for the product and therefore often extends beyond the United States. The comment said it is not uncommon for pharmaceutical companies to develop trademarks that will be granted registrations from trademark offices in connection with approvals from health authorities in multiple countries with the goal of becoming global trademarks. Except for product names in foreign markets that are identical to the trademark under review, the comment recommended that FDA limit its requests for search data to clearance activities relating to trademarks that are in use or appear likely from public sources to be in use in the near future in the United States. The comment said that data from outside the United States can be voluminous and are not necessary for the proper performance of FDA's functions or for determining the

appropriateness of the name in the United States.

The comment also expressed concern with ''FDA's proposed broad request for trademark search-related information insofar as they apply to all search queries.'' (The comment referenced bullet points on pages 14 and 36 of the concept paper). The comment said that FDA underestimates the burden of collecting such information. At the early stages of trademark clearance, the comment noted that a sponsor generally begins with a list that could include hundreds of candidates, and that this list is typically narrowed in successive waves of more in-depth searches of candidates based on legal and regulatory concerns. The comment said that because a sponsor cannot determine in advance which of the candidates on the initial list will survive the clearance process, sponsors would have to maintain the records of the early-stage, en masse searches relating to possibly hundreds of names on the list to comply with a request for all search queries. The comment said that sponsors should not be expected to maintain search query information for en masse search investigations on name candidates, especially those which had been eliminated previously and well before submission to FDA as proposed trademarks. It also asserted companies' entitlement to maintain applicable legal privileges for information and communications developed in the course of trademark availability assessment.

2. The comment also said that medication errors can be caused by any number of system failures or other causes at any one or more stages in the process of prescribing, dispensing, and administering medications, and that medication errors are the result of multiple causes. The comment said that there is no scientifically valid and reliable method for measuring the extent to which pharmaceutical proprietary names might contribute to the risk of such errors or whether such methods could ever adequately take into account the subjectivity and complexity of human perception. It also stated that the agency's proprietary name review process must be guided by the first amendment.

3. The comment noted that the burden of the collection of information should be minimized by using various automated collection techniques and other forms of information technology, and referred to the computerized databases listed in Attachment A of the concept paper. The comment said that some of the databases listed have limited value because they are substantially redundant with the collective content of the remaining databases, are not amenable to automated searching, or have more limited automated searching capabilities than others. The comment also noted that some sponsors may not have the resources to subscribe to many databases and will have to rely on the search capabilities of vendors, and questioned whether vendors that offer search services include all of the sources listed on Attachment A of the concept paper.

**FDA Response**

To evaluate the proposed information collection, FDA believes it is important to recall that the information collection not only supports the agency's statutory mandates to ensure that drugs are safe and effective and are not misbranded, but also that it is part of a voluntary pilot program intended to make FDA's regulatory decisions more transparent and to explore ways to make FDA's application review more efficient. As indicated in the concept paper, FDA committed to this program in conjunction with the reauthorization of PDUFA IV, after extensive discussion with industry, to support the goals of reducing medication errors related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs.

The pilot program is intended not only to minimize the use of names that are misleading or that are likely to lead to medication errors, but also to provide a basis for FDA to determine whether in the future, it would be feasible and preferable for FDA to achieve these goals through review of analyses of proprietary names conducted and submitted by applicants, as many applicants have suggested, rather than conducting its own analyses, as is the current practice. To this end, the proposed information collection recommended in the pilot program is largely modeled on the information that FDA itself currently generates and analyzes in evaluating proposed proprietary names, in accordance with its statutory authorities and the first amendment. FDA requests that these elements be submitted by pilot program participants because of its own direct experience supporting the utility of such information, but as the pilot program concept paper makes clear, applicants can still participate in the pilot program if they plan to deviate from the proposed proprietary name safety evaluation methods recommended in the concept paper and instead use alternative or additional methods. Also, to the extent that the comment also suggests that the information collection for the pilot program should also be limited to information related to safety concerns, we note that applicants can participate in the pilot program without submitting any information to evaluate the promotional implications of their proposed proprietary names.

**With Regard to the Specific Elements of the Comment**

1. FDA does not seek to expand the burden of collecting trademark search-related information, and is not requesting that sponsors submit broad trademark search queries or other search-related screening information about any preliminary or early-stage proprietary name candidates which the sponsor eliminated from consideration and therefore did not submit to FDA for review as part of the proprietary name pilot program.

FDA is interested in collecting all search queries that are specific to the proposed proprietary name a sponsor submits to the pilot program for review, including all existing, publicly available drug names initially identified as a potential source of confusion with respect to the proposed name. Specifically, FDA requests that a sponsor submit all of the search queries that were generated only for the specific proposed proprietary name submitted to FDA. For each query, the results are dependent upon how each data source was searched.

Thus, in order for FDA to evaluate the strength of the results, information pertaining to each query, such as—the system parameters that were used for each search; the precise databases that were searched; any thresholds imposed on the output; the date the search was conducted or the last update of the database searched; the pooled results with source citation and full product characteristics of each name identified as a possible source of confusion with the proposed name—should be provided on the proposed name submitted to FDA for evaluation. Providing FDA with all of the search queries relevant to the proposed name and associated tests, including the Failure Mode and Effects Analysis, will permit FDA to understand and evaluate the basis for the sponsor's conclusions that existing drug names that are identical or potentially similar to the proposed proprietary name would not be likely to cause confusion and medication errors. By submitting this information, the sponsor would be supporting the goals of the concept paper and the voluntary pilot program.

Such goals include not only minimizing the use of names that are misleading or that are likely to lead to medication errors in the clinical setting (due to look-alike and sound-alike proprietary names), but also include allowing FDA to evaluate whether to have applicants perform their own name analysis and submit resulting data to FDA for review.

At the conclusion of the pilot program, FDA will be evaluating what information would be most useful as the basis of those industry-conducted proprietary name reviews. These evaluations will be largely qualitative. The results of the pilot program and recommended additions and changes to methods based on the reported results will be discussed in a future public meeting. With regard to the comment addressing legal privilege related to trademark evaluations, as noted previously, applicants can participate in the voluntary pilot program even if they deviate from the proposed proprietary name safety evaluation methods recommended in the concept paper, and therefore may determine for themselves how to submit useful information without compromising legal privileges related to trademark.

FDA also acknowledges that ''search data'' for trademark clearance activities collected from outside the United States can be voluminous, particularly if sponsors are seeking to register a single global trademark for their drug in multiple countries. As already indicated FDA is not seeking broad trademark clearance search data but is interested in information specifically relevant to assessing the potential for medication error related to the specific proprietary name proposed for the United States. For this purpose, FDA agrees that the most relevant information includes information identifying product names in foreign markets that are identical to the name proposed for the U.S. market, regardless of active ingredient or other product characteristic.

In addition, FDA agrees that it is important to collect information regarding phonological or orthographic similarities between the proposed name and foreign drug names that are in use or appear likely from public sources to be in use in the near future in the United States; such names should be considered in the same way as the names of any other drug products also in use in the United States.

FDA believes that in certain circumstances, however, it is in the interest of public health for sponsors to provide the agency with other data that they may possess that indicates close similarities in spelling and pronunciation between the proprietary name proposed for the U.S. and foreign drug names. For example, patients in the United States may experience medication errors related to confusion of the names of a drug marketed in the United States and one obtained from a foreign country, either while the patient was abroad or through other means, whether or not the foreign drug is intended for the U.S. market by the manufacturer. This potential situation presents a particular public health risk where a drug product is currently marketed in a foreign country under a proprietary name which is identical or very similar to the proposed proprietary drug name under FDA review, but the drugs contain a different active ingredient. FDA therefore believes it is useful and supportive of the agency's drug safety mandates to encourage the submission of such data in the pilot program.

2. Concerning the comment that there is no scientifically valid and reliable method for measuring the extent to which pharmaceutical proprietary names might contribute to the risk of medication errors, FDA agrees that medication errors can be caused by any number of system failures or other contributing factors at any one or more stages in the medication use system, and that medication errors may be the result of multiple causes, many of which are not easily controllable. However, proprietary product names have been widely recognized as one important contributing source of medication errors, and one that is amenable to control. In the U.S. healthcare system, healthcare practitioners rely on a product's name as the critical identifier of the appropriate therapy in a market of thousands of products. Although review of proprietary names will not eliminate all medication errors, it can help reduce the risk of such errors by identifying and eliminating a contributing factor prior to drug approval. The Institute of Medicine (IOM) has repeatedly recognized that medication use errors may occur due to sound-alike or look-alike names, unclear labels, or poorly designed packaging and are pivotal causes of these system-wide problems (*To Err is Human—Building a Safer Health System (2000) and Preventing Medication Errors (2006)*). (See section II.A. of the concept paper for a brief summary of pertinent IOM conclusions). In 2007 Congress responded to these IOM findings, and as part of the reauthorization of PDUFA IV, mandated FDA's collection and use of user fees for, among other things, the review of drug applications and drug safety activities, in support of which FDA committed to meet performance goals, several of which highlighted the importance of considering proprietary names as a potential source of medication errors. These PDUFA IV goals, communicated to Congress, include FDA's commitment to implement this pilot program as one measure to help reduce medication errors related to look-alike and sound-alike proprietary names.

FDA has acknowledged in three public meetings on proprietary drug review (held in June 2003, December 2003, and June 2008) that there is no gold standard for testing proprietary drug product names to assess the risk of medication error. At the public technical meeting held in June 2008, topics included subsequent review of developments in the science and practice of proprietary name analysis since the 2003 meetings, the strength of evidence for the current approaches to name review for prescription and nonprescription products, and in the absence of a gold standard, the elements of best practices in testing. At the June 2008 public meeting, all of the proposed evaluation methods were judged by individual experts participating in the public meeting to be complementary and were considered to offer value in the name testing process. As discussed in section IV of the concept paper, in the absence of a gold standard, FDA emphasizes that the best approach has proved to be the use of a combination of tests to evaluate name appropriateness. The concept paper contains FDA's current thinking on the logistics and name testing and evaluation under the pilot program. However, docket number FDA–2008–N–0281 remains open for comment during the pendency of the pilot program and FDA invites comments on human factors testing. In addition, after accruing 2 years of experience with pilot program submissions, including reviewing applicants' name analyses that use alternative methodologies, FDA is committed to publish draft guidance on best test practices for proprietary name review following public consultation with industry, academia, and others from the general public. Thus, the pilot program, in which participants are free to propose and provide results of alternate methodologies for name assessment, is in part intended to help inform potential future program modifications and changes in information collected to help prevent medication error.

3. Concerning the comment that some of the databases listed in the concept paper have limited value because of redundancy with the collective content

of the remaining databases, and because they are not amenable to automated searching or have more limited automated searching capabilities than others, FDA understands that there may be some overlap across some of the databases and/or some limitation to automated search capabilities. However, as discussed in section IV.A.3. of the concept paper, the majority of names with similarity to the proposed proprietary name can be identified through database searches, and a variety of publicly available databases and resources containing product names can be used to identify similar names. FDA itself uses databases, the Internet, and other printed and electronic drug product resources to search for orthographic and phonological name similarities. The concept paper recommends that applicants search a variety of sources and, at a minimum, search the publicly available databases listed in Appendix A of the concept paper ''Computerized Resources'' because these databases are ones that FDA itself uses and considers the information in these references useful screening tools if properly searched. If a name appears in more than one database, it is acceptable to list the name once and list the sources along with the identified name. In addition, in most cases, the computerized resources listed in Appendix A are publicly available, including the Phonetic Orthographic Computer Analysis (POCA) software (see FDA's notice of availability in the **Federal Register** of February 17, 2009 (74 FR 7450). As part of the pilot program, FDA encourages sponsors to identify any new databases or those databases which are more amenable to automated searching.

FDA estimates the burden of this collection of information in table 1 of this document. The ''Hours Per Response'' is for all of the submissions and notifications to FDA described previously under paragraphs 1 to 4 in this document, and is based on information provided by industry as well as FDA's familiarity with the time required for this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| | Number of Respondents | Number of Responses per Respondent | Total Annual Responses | Hours Per Response | Total Hours |
|---|---|---|---|---|---|
| Pilot Project Proprietary Name Review | 20 | 1 | 20 | 480 | 9,600 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 11, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–14212 Filed 6–16–09; 8:45 am]

BILLING CODE 4160–01–S

## 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. App.), notice is hereby given of meetings of the National Advisory Mental Health Council.

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 Advisory Mental Health Council.

*Date:* July 17, 2009.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room D, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* August 14, 2009.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room D, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* September 9, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room D, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–14087 Filed 6–16–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Health Marketing (BSC, NCHM)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned committee:

*Times and Dates:*

9 a.m.–5 p.m., July 14, 2009.

8:30 a.m.–1 p.m., July 15, 2009.

*Place:* CDC, 1600 Clifton Road, NE., Building 19, Room 256/257, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

*Purpose:* The Secretary, Department of Health and Human Services (HHS), and, by delegation, the Director, Centers for Disease Control and Prevention (CDC), are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act (PHSA), as amended to: develop and implement disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States. Under these and additional PHSA and other authorities, CDC acts by identifying and defining preventable health problems; maintaining active surveillance of diseases through epidemiologic and laboratory investigations and data collection, analysis, and distribution; conducting operational research aimed at developing and testing effective disease prevention, control, and health promotion programs; administering a national occupational safety and health program; controlling the introduction and spread of infectious diseases; and providing consultation and assistance to other nations and international agencies to assist in improving their disease prevention and control, environmental health, and health promotion activities. CDC carries out these functions through a number of Coordinating Centers/Offices and National Centers and Institutes with expertise and responsibilities in specific areas.

*Matters to be Discussed:* The agenda will include discussions regarding two topics on which the BSC decided to focus its reviews: (1) Discovery activities (i.e., generation of knowledge, science and research); and (2) Diffusion activities (i.e., translation and transfer of knowledge to practice). Agenda items are tentative and subject to change.

*Contact Person for More Information:* Dionne R. Mason, Committee Management Specialist, NCHM, 1600 Clifton Road, NE., Mail Stop E–21, Atlanta, Georgia 30333, *Telephone:* (404) 498–2314, Fax (404) 498–2221. The deadline for notification of attendance is June 30, 2009.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 10, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E9–14213 Filed 6–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Certificate of Registration

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0010.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Registration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 16226) on April 9, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 17, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Title:* Certificate of Registration.

*OMB Number:* 1651–0010.

*Form Number:* Forms 4455 and 4457.

*Abstract:* The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles that are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession. It is also used for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, processing, etc., which will subsequently be returned to the United States either free of duty or at a reduced rate.

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Individuals, Travelers.

*Estimated Number of Respondents:* 200,000.

*Estimated Number of Total Annual Responses:* 200,000.

*Estimated Time Per Response:* 3 minutes.

*Estimated Total Annual Burden Hours:* 10,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: June 11, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–14226 Filed 6–16–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Foreign Assembler's Declaration (With Endorsement by Importer)

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651–0031.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before August 17, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

*Title:* Foreign Assembler's Declaration (with Endorsement by Importer).

*OMB Number:* 1651–0031.

*Form Number:* None.

*Abstract:* The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 2,730.

*Estimated Annual Time Per Respondent:* 110.77 hours.

*Estimated Total Annual Burden Hours:* 302,402.

Dated: June 11, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–14228 Filed 6–16–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### United States Immigration and Customs Enforcement

### Agency Information Collection Activities: New Information Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review; Form 70–008, ICE Secure Communities Stakeholder ID Assessment Questionnaire, OMB No. 1653–NEW.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 14, 2009 Vol. 74 No. 70 17205, allowing for a 60 day public comment period with a follow up notification of corrections published on Tuesday, June 2, 2009 Vol. 74 No. 104 26416. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days July 17, 2009. Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* ICE Secure Communities Stakeholder ID Assessment Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

*sponsoring the collection:* Form 70–008. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and Local Correctional Facilities. The ICE Stakeholder Assessment's purpose is to understand the level of support and awareness of the Secure Communities program. This assessment will be a snapshot in time of a sample of state and local organizations that will be impacted in some way by the Secure Communities program to establish a baseline of attitudes prior to implementing the program in their state.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 10 minutes (0.1667 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166.7 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions should be sent via e-mail to *forms.ice@dhs.gov* with ''ICE Form 70–008'' in the subject line; inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: June 11, 2009.

**Joseph M. Gerhart, Chief,**

*Records Management Branch Chief, U.S. Immigration and Customs Enforcement, Department of Homeland Security.*

[FR Doc. E9–14178 Filed 6–16–09; 8:45 am]

BILLING CODE 9111–28–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1837–DR; Docket ID FEMA–2008–0018]**

### Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1837–DR), dated May 12, 2009, and related determinations.

**DATES:** *Effective Date:* June 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 12, 2009.

Jefferson Davis County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–14273 Filed 6–16–09; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1841–DR; Docket ID FEMA–2008–0018]**

### Kentucky; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1841–DR), dated May 29, 2009, and related determinations.

**DATES:** *Effective Date:* May 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 29, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, flooding, and mudslides during the period of May 3–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kim R. Kadesch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Breathitt, Floyd, Owsley, and Pike Counties for Individual Assistance.

Ballard, Breathitt, Carlisle, Clay, Crittenden, Floyd, Grayson, Hickman, Jackson, Knott, Lawrence, Lee, Leslie, Letcher, Madison, Magoffin, Marshall, Owsley, Perry, Pike, Russell, and Trigg Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–14279 Filed 6–16–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1842–DR; Docket ID FEMA–2008–0018]**

### Alabama; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1842–DR), dated June 3, 2009, and related determinations.

**DATES:** *Effective Date:* June 3, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 3, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, flooding, and straight-line winds during the period of May 6–8, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Autauga, Bullock, Elmore, and Montgomery Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–14275 Filed 6–16–09; 8:45 am]

**BILLING CODE 9110–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1841–DR; Docket ID FEMA–2008–0018]**

### Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1841–DR), dated May 29, 2009, and related determinations.

**DATES:** *Effective Date:* June 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 29, 2009.

Magoffin County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–14274 Filed 6–16–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2009–0485]**

### National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice announces a teleconference meeting of the National Offshore Safety Advisory Committee (NOSAC) to discuss items listed in the agenda as well as other items that NOSAC may consider. This meeting will be open to the public.

**DATES:** The teleconference call will take place on Wednesday, July 8, 2009, from 10 a.m. to 1 p.m. EST. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 1, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before July 1, 2009.

**ADDRESSES:** The Committee will meet, via telephone conference, on July 8, 2009. Members of the public wishing to participate may contact Commander P.W. Clark at 202–372–1410 for call in information or they may participate in person by coming to Room 3317, U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. As there are a limited number of teleconference lines, public participation will be on a first come basis. Written comments should be sent to Commander P.W. Clark, Designated Federal Officer of NOSAC, Commandant (CG–5222), 2100 Second Street, SW., Washington, DC 20593–0001; or by fax to 202–372–1926. This notice is available on our online docket, USCG–2009–0485, at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Commander P.W. Clark, Designated Federal Officer of NOSAC, or Mr. Kevin Y. Pekarek, Assistant Designated Federal Officer, telephone 202–372–1386; fax 202–372–1926.

**SUPPLEMENTARY INFORMATION:** Public participation is welcome and the public may participate in person by coming to Room 3317, U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington DC 20593 or by contacting Commander P.W. Clark at 202–372–1410 for call in information. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463).

#### Agenda of Meeting

*The agenda for the July 8, 2009 Committee meeting is as follows:*

(1) Introduction of Committee members and the public.

(2) Discussion of the near final draft Navigation Inspection Vessel Circular on noxious liquid substance carriage that addresses industry suggestions submitted at the April 23, 2009, NOSAC meeting.

(3) NOSAC to provide an update on work by the Subcommittee on Medical Treatment of Injured Workers from Outer Continental Shelf (OCS) Facilities. A discussion on the recommendations.

(4) NOSAC to provide update on the work of the Foreign Citizens Engaged in OCS Activities subcommittee including an interim report if available.

(5) NOSAC Subchapter N Economic Analysis Working Group report to the Coast Guard for 33 CFR Subchapter N regulations.

(6) USCG/Minerals Management Service (MMS) may provide a brief discussion of MMS recently released notice to lessees that effect NOSAC stakeholders.

#### Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than July 1, 2009. Written material for distribution at this meeting should reach the Coast Guard no later than July 1, 2009.

#### Minutes

The teleconference will be recorded, and a summary will be available for the public review and copying 30 days following the teleconference meeting at the following location (*http://www.fido.gov/facadatabase*).

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Kevin Pekarek at 202–372–1386 as soon as possible.

Dated: June 10, 2009.

**J. G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. E9–14248 Filed 6–16–09; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5321–C–02]**

### Notice of Availability: Notice of Fund Availability (NOFA) for Fiscal Year 2009 Neighborhood Stabilization Program 2 Under the American Recovery and Reinvestment Act of 2009; Correction

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** On May 7, 2009, HUD posted on its Web site its Notice of Funding Availability (NOFA) for competitive grants for the Neighborhood Stabilization Program 2 (NSP2), authorized under the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The purpose of the NSP2 program is to stabilize neighborhoods whose viability has been and continues to be damaged by the economic effects of properties that have been foreclosed upon and abandoned. Today's **Federal Register** publication announces that HUD has posted a notice correcting the NSP2 NOFA on its Web site. Specifically, the notice corrects the NSP2 NOFA to, among other things, permit NSP2 applicants to use a combined index score to determine whether they meet the geographic targeting threshold requirement, correct section (C) of the eligible activities table, and rescind the aggregate 5 percent purchase discount while leaving the 1 percent discount on individual purchases intact. The notice correcting the NSP2 NOFA is available on the HUD Web site at *http://www.hud.gov/recovery.*

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Gimont at (202) 401–2044.

(Except for the ''800'' number, these telephone numbers are not toll-free.)

Dated: June 11, 2009.

**Nelson R. Bregón,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. E9–14285 Filed 6–12–09; 4:15 pm]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5229–FA–01]**

## Announcement of Funding Awards for the Rental Assistance for Non-Elderly Persons With Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) for Fiscal Year 2008

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Announcement of Funding Awards.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2008 Notice of Funding Availability (NOFA) for the Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) program funding for Fiscal Year 2008. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on guidelines established in the NOFA.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the FY 2008 Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) program awards, contact the Office of Public and Indian Housing's Grant Management Center, Acting Director, Keia L. Neal, Department of Housing and Urban Development, Washington, DC, telephone (202) 475–8908. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The authority for the $15,000,000 in one-year budget authority for the Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) program is found in the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2008 (Pub. L.110–161). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213 (d) of the Housing and Community Development Act of 1974, as amended.

The purpose of the Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) program is to provide vouchers to non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owner's establishment of preferences for the admission of elderly families, or in certain types of Section 202, Section 221(d)(3), or Section 236 developments where the owner is restricting occupancy in the developments (or portions thereof) to elderly families. The vouchers will enable non-elderly disabled families affected by these actions to access affordable housing.

The Fiscal Year 2008 awards announced in this Notice were selected for funding in a competition announced in the **Federal Register** NOFA published on November 28, 2008. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the twelve (12) awards made under the Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments) competition.

Dated: June 1, 2009.

**Deborah Hernandez,**

*Deputy Assistant Secretary.*

| Recipient | Address/City/State/Zip code | Funding amount | Vouchers |
|---|---|---|---|
| Alaska Housing Finance Corporation | P.O. Box 101020, Anchorage, AK 99510 | $296,881 | 45 |
| San Francisco Housing Authority | 440 Turk Street, San Francisco, CA 94102 | 231,429 | 16 |
| Housing Authority City of Boulder DBA Boulder Housing Partner. | 4800 North Broadway, Boulder, CO 80304 | 572,809 | 81 |
| The Colorado Department of Human Services | 4020 South Newton Street, Denver, CO 80236 | 478,176 | 100 |
| Chelmsford Housing Authority | 10 Wilson Street, Chelmsford, MA 1824 | 686,801 | 88 |
| Taunton Housing Authority | 30 Olney Street, Suite B, Taunton, MA 2780 | 979,140 | 100 |
| Housing Authority of the City of Wilmington, N.C. | 1524 South 16th Street, Wilmington, NC 28401 | 264,048 | 50 |
| New Hampshire Housing Finance Authority | 32 Constitution Drive, Bedford, NH 3110 | 427,325 | 56 |
| Lucas Metropolitan Housing Authority | P.O. Box 477 435 Nebraska Avenue, Toledo, OH 43697. | 532,584 | 100 |
| Adams County Housing Authority | 40 East High Street, Gettysburg, PA 17325 | 59,917 | 14 |
| Metropolitan Development and Housing Agency | 701 South Sixth Street, Nashville, TN 37206 | 550,488 | 100 |
| King County Housing Authority | 600 Andover Park West, Tukwila, WA, 98188 | 1,078,764 | 100 |

[FR Doc. E9–14120 Filed 6–16–09; 8:45 am]
BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Proposed Renewal of Information Collection: OMB Control Number 1093–0005, Payments in Lieu of Taxes

**AGENCY:** Office of Budget, 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 Budget, Office of the Secretary, Department of the Interior (DOI), announces the proposed extension of a public information collection required by the Payments in Lieu of Taxes Act (PILT) and seeks public comments on the provisions thereof. After public review, the Office of Budget will submit the information collection to Office of Management and Budget (OMB) for review and approval.

**DATES:** Consideration will be given to all comments received by *August 17, 2009.*

**ADDRESSES:** Send your written comments to the U.S. Department of the Interior, Office of the Secretary, Office of Budget, Attn. Brian Yost, 1849 C St., NW., MS 4119 MIB, Washington, DC 20240. Send any faxed comments to (202) 208–3911, attn Brian Yost. Comments may also be e-mailed to *Brian_Yost@ios.doi.gov.* Individuals providing comments should reference OMB Control Number 1093–0005, ''Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, 143 CFR 441.'' Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this renewed information collection should be directed to Brian Yost at U.S. Department of the Interior, Office of the Secretary, Office of Budget, 1849 C St., NW., MS 4119 MIB, Washington, DC 20240. You may also fax requests for further information to (202) 208–3911, or e-mail him at *Brian_Yost@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. 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 Budget is planning to submit to OMB for extension or re-approval.

Public Law 97–258 (31 U.S.C. 6901–6907), as amended, the Payments in Lieu of Taxes (PILT) Act, was designed by Congress to help local governments recover some of the expenses they incur in providing services on public lands. These local governments receive funds under various Federal land payment programs such as the National Forest Revenue Act, the Mineral Lands Leasing Act, and the Taylor Grazing Act. PILT payments supplement the payments that local governments receive under these other programs.

The PILT Act requires that the Governor of each State furnish the Department of the Interior with a listing of payments disbursed to local governments by the States on behalf of the Federal Government under 12 statutes described in Section 4 of the Act (31 U.S.C. 6903). The Department of the Interior uses the amounts reported by the States to reduce PILT payments to units of general local governments from that which they might otherwise receive. If such listings were not furnished by the Governor of each affected State, the Department would not be able to compute the PILT payments to units of general local government within the States in question.

In fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of the Secretary of the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004 (69 FR 70557). The Office of Budget, Office of the Secretary is now planning to extend the information collection approval authority in order to enable the Department of the Interior to continue to comply with the PILT Act.

### II. Data

(1) *Title:* Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments (43 CFR 44).

*OMB Control Number:* 1093–0005.

*Current Expiration Date:* December 31, 2009.

*Type of Review:* Information Collection Renewal.

*Affected Entities:* State, local or Tribal government.

*Estimated Annual Number of Respondents:* 43.

*Frequency of Response:* Annual.

(2) *Annual Reporting and Record Keeping Burden: Average Reporting Burden per Application:* 50 hours.

*Total Annual Reporting:* 2,150 hours.

(3) *Description of the Need and Use of the Information:* The statutorily-required information is needed to compute payments due units of general local government under the PILT Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each State furnish a statement as to amounts paid to units of general local government under 12 revenue-sharing statutes in the prior fiscal year.

### III. Request for Comments

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 will have practical utility; (b) The accuracy of the agency's estimate of the burden of the information collection; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who 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 to 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.

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.

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street, NW., Washington, DC during normal business hours, excluding legal holidays. For an appointment to inspect comments, please contact Brian Yost by telephone on (202) 208–7409, or by e-mail at *Brian_Yost@ios.doi.gov* to make an appointment. A valid picture identification is required for entry into the Department of the Interior.

**Pam Haze,**

*Deputy Assistant Secretary, Budget and Business Management.*

[FR Doc. E9–14261 Filed 6–16–09; 8:45 am]

**BILLING CODE 4310–RK–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO320000 L13300000 PO0000]**

### Extension of Approved Information Collection, OMB Control Number 1004–0121

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** 60-day notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) extend approval for the paperwork requirements in 43 CFR parts 3500 through 3590, which cover leasing of solid minerals other than coal and oil shale.

**DATES:** You must submit your comments to the BLM at the address below on or before August 17, 2009. The BLM is not obligated to consider any comments postmarked or received after the above date.

**ADDRESSES:** You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–0121. You may also comment by e-mail at: *Jean_Sonneman@blm.gov.* Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** You may contact Vincent Vogt, Solid Minerals Group, at 202–785–6570 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Vogt. You may also contact Mr. Vogt to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR parts 3500 through 3590. The BLM will request that the OMB approve this information collection activity for a 3-year term.

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 the BLM's submission of the information collection requests to OMB.

The following information is provided for the information collection:

*Title:* Leasing of Solid Minerals Other Than Coal and Oil Shale (43 CFR 3500–3590).

*Forms:*

- Form 3504–1, Personal Bond and Power of Attorney;
- Form 3504–3, Bond Under Lease;
- Form 3504–4, Statewide or Nationwide Personal Mineral Bond for Prospecting Permits and Leases;
- Form 3510–1, Prospecting Application and Permit;
- Form 3510–2, Phosphate or Sodium Use Permit; and
- Form 3520–7, Lease.

*OMB Control Number:* 1004–0121.

*Abstract:* This notice pertains to information collections that are necessary for the management of leases and prospecting permits for solid minerals other than coal and oil shale. The BLM manages such leases and permits under the Mineral Leasing Act of 1920, the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), and other statutes that authorize the Secretary of the Interior to regulate the development of mineral deposits on Federal lands. The information collections covered by this notice are found at 43 CFR parts 3500 through 3590, and in the forms listed above.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 430 Federal leases are in effect in this program, which are controlled by many operators.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The currently approved annual reporting burden for this collection is 6,522 hours. The following chart details the individual components and respective hour burden estimates of this information collection request:

| Regulation 43 CFR | Type of application | Number of responses | Hours per response |
|---|---|---|---|
| 3502 | Qualification Statement | 10 | 1 |
| 3503 | Area Avail. for Leasing | 10 | 1 |
| 3504 | Bond Forms 3504–1, 3504–3 and 3504–4 | 36 | 4 |
| 3505 | Prospecting Permit Form 3510–1 | 46 | 10 |
| 3506 | Exploration License | 2 | 3 |
| 3507 | Preference Right Lease Form 3520–7 | 2 | 300 |
| 3508 | Competitive Lease Bid | 5 | 20 |
| 3509 | Fractional, Future Interest Lease Form 3520–7 | 1 | 20 |
| 3510 | Fringe Acreage Lease or Lease Modification Form 3520–7 | 5 | 20 |
| 3511 | Lease Renewal or Adjustment Form 3520–7 | 22 | 1 |
| 3512 | Assignment or Sublease | 28 | 6 |
| 3513 | Royalty Rental Reduction | 1 | 40 |
| 3514 | Relinquishment and Cancellations | 1 | 40 |
| 3515 | Lease Exchanges | 1 | 40 |
| 3516 | Use Permit Form 3510–2 | 1 | 1 |

| Regulation 43 CFR | Type of application | Number of responses | Hours per response |
|---|---|---|---|
| 3517 | Development Contract | 1 | 1 |
| 3581 | Gold, Silver Land Grant | 1 | 40 |
| 3583 | Shasta Trinity Units | 1 | 20 |
| 3585 | White Mtn. Alaska | 1 | 20 |
| 3592 | Mine Plan | 30 | 150 |
| 3593 | Bore Holes/Samples | 23 | 1 |
| 3597 | Production Records | 80 | 2 |
| Total | | 308 | |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* The currently approved annual non-hour cost burden for Control Number 1004–0121 is $7,611. All of the non-hour cost burdens are for non-refundable filing fees.

The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Before including your address, phone number, email 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.

**Jean Sonneman,**

*Acting Information Collection Clearance Officer, Bureau of Land Management.*

[FR Doc. E9–14180 Filed 6–16–09; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed renewal of an existing Information Collection Request (1024–0258).

**DATES:** Public comments will be accepted on the renewal of the existing Information Collection Request (ICR) on or before August 17, 2009.

**ADDRESSES:** *Send Comments To:* Carol Mansfield, Ph.D., RTI International, 3040 Cornwallis Rd, Research Triangle Park, NC or via e-mail at: *carolm@rti.org.* Also, you may send comments to Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St. (2300), Washington, DC 20005 or via e-mail at *James_Gramann@partner.nps.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

*To Request a Draft of Proposed Collection of Information Contact:* Carol Mansfield, Ph.D., RTI International, 3040 Cornwallis Rd, Research Triangle Park, NC: or via phone: 919/541–8053, or via e-mail at: *carolm@rti.org.*

**FOR FURTHER INFORMATION CONTACT:** Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St. (2300), Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov.* You are entitled to a copy of the entire ICR package free of charge.

**SUPPLEMENTARY INFORMATION:**

*Title:* Visitor Surveys for Cape Hatteras National Seashore.

*Bureau Form Number:* None.

*OMB Number:* 1024–0258.

*Expiration Date:* 11/30/2009.

*Type of Request:* Renewal, with change, of an existing collection.

*Description of Need:* The National Park Service (NPS) is requesting renewal of an existing information collection that received emergency clearance on May 21, 2009. RTI International, under contract with Cape Hatteras National Seashore, has completed a survey of local businesses under the emergency approval and began conducting a visitor survey at Cape Hatteras National Seashore (CAHA). The current request for a renewal is to continue the visitor survey. The survey gathers information that will be used in the planning and rulemaking processes for CAHA's Off-Road Vehicle (ORV) Management Plan/ Environmental Impact Statement (EIS) and ORV regulation. The continuation of the visitor survey with the current renewal request will allow the NPS to have a seasonally representative sample of CAHA visitors. By having seasonal representation, the NPS will be better able to have a complete picture of visitors and visitor preferences for park management and for the final economic analysis.

*Automated data collection:* No automated data collection will be used. Information will be collected via on-site surveys.

*Description of respondents:* Visitors to Cape Hatteras National Seashore.

*Estimated average number of respondents:* 2,000 (1,200 respondents & 800 non-respondents)

*Estimated average number of responses:* 2,000 (1,200 respondents & 800 non-respondents)

*Estimated average burden hours per response:* 10 minutes for respondents & 2 minutes for non-respondents.

*Frequency of Response:* 1 time per respondent.

*Estimated total annual reporting burden:* 66 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 9, 2009.

**Cartina Miller,**

*NPS, Information Collection Clearance Officer.*

[FR Doc. E9–14221 Filed 6–16–09; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Coastal Impact Assistance Program (CIAP) Allocations, Fiscal Years 2009–2010

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Availability of Recipient Allocation Amounts for Fiscal Years 2009 and 2010.

**SUMMARY:** The MMS is issuing this notice to advise the public of the availability of the individual allocation amounts available to each of the 73 eligible recipients of the CIAP. The amounts are an important piece of information to be used by the States and Coastal Political Subdivisions (CPSs) in the completion of CIAP grant applications.

**FOR FURTHER INFORMATION CONTACT:** Ms. Colleen Benner, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170. You may also contact Ms. Benner by telephone at (703) 787–1710.

**SUPPLEMENTARY INFORMATION:** The Energy Policy Act of 2005 (Act) created CIAP by amending Section 31 of the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1356(a)). Under the provisions of the Act, the authority and responsibility for the management of CIAP is vested in the Secretary of the Interior (Secretary). The Secretary has delegated this authority and responsibility to MMS. In the February 16, 2007, continuing resolution, Congress approved a 3 percent appropriation of the CIAP funds to be used by MMS to administer the program. Under Section 384 of the Act, MMS shall disburse $250 million for each fiscal year 2007 through 2010 to eligible producing States and CPSs. Each eligible State is allocated its share based on the qualified OCS revenues generated off of its coast in proportion to the total qualified OCS revenues generated off the coast of all eligible States. In order to receive CIAP funds, States are required to submit a coastal impact assistance plan (Plan) that MMS must approve prior to disbursing any funds. All funds shall be disbursed through a grant process. The guidance has been developed by MMS to provide the information necessary for States to develop a Plan and submit it to MMS. The allotment amounts and guidelines may be found on the MMS Web site at *http://www.mms.gov/offshore/CIAPmain.htm*.

Dated: June 8, 2009.

**Walter D. Cruickshank,**

*Acting Director, Minerals Management Service.*

[FR Doc. E9–14237 Filed 6–16–09; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2009–N116; 81440–1112–0000–F2]**

### Endangered and Threatened Wildlife and Plants; Permits, Beacon Solar Energy Project, Kern County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to undertake scoping for an environmental document (Environmental Assessment or Environmental Impact Statement) related to a habitat conservation plan for the proposed Beacon Solar Energy Project.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to conduct public scoping under the National Environmental Policy Act of 1969 (NEPA) to gather information necessary to help develop a NEPA document in connection with a proposed Habitat Conservation Plan (HCP) for the Beacon Solar Energy Project (Beacon HCP), currently under development by Beacon Solar LLC (the applicant). To be implemented near California City, in Kern County, California, the proposed Beacon HCP forms part of an incidental take permit application under the Endangered Species Act of 1973, as amended (Act). The requested permit term is 45 years. We provide this notice to obtain suggestions, comments, and useful information from other agencies and the public on the scope of the document, including the significant issues deserving of study, the range of alternatives, and the range of impacts to be considered.

**DATES:** We must receive any written comments on or before July 17, 2009.

**ADDRESSES:** *Written Submissions:* Please address written information, comments, or questions related to the preparation of the EA or EIS to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Alternatively, you may fax comments to (805) 644–3958.

**FOR FURTHER INFORMATION CONTACT:** Judy Hohman, Fish and Wildlife Biologist, (see **ADDRESSES**), telephone (805) 644–1766, extension 304.

**SUPPLEMENTARY INFORMATION:**

#### Background

We intend to scope under NEPA (42 U.S.C. 4321 *et seq.*) to gather information necessary to help develop a NEPA document in connection with our proposed action or reaching a permit decision on the Beacon Solar Energy Project's proposed HCP. The HCP forms part of an incidental take permit application under the Act (16 U.S.C. 1531 *et seq.*). We provide this notice to obtain suggestions and information on the scope of issues and alternatives to be considered in the NEPA document. An EA is prepared for Federal actions that will have a less than significant effect on all resources impacted in the human environment, or to determine whether an EIS should be prepared. An EIS is prepared for Federal actions that will have a significant impact on one or more resources in the human environment. We will determine if an EA or an EIS will be prepared based on the public comments received and the complexity of issues identified during the scoping phase of the NEPA process.

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act to include the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). ''Harm'' in the definition of take includes significant habitat modification or degradation that kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3(c)). Under section 10(a) of the Act, we may issue permits to authorize ''incidental take'' of listed species. Any proposed incidental take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, the applicant must prepare a HCP describing the impact that will likely result from such taking, the strategy for minimizing and mitigating the incidental take, the funding available to implement such steps,

alternatives to such taking, and the reason such alternatives are not being implemented. To obtain an incidental take permit, an applicant must prepare a HCP that meets the issuance criteria established by the Service (50 CFR 17.22(b)(2)). Should a permit be issued, the permit would include assurances under the Services' ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)). Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 13 and 50 CFR 17.

The issuance of an incidental take permit is a Federal discretionary action. Therefore, we must comply with NEPA and ensure that environmental information is available to public officials and citizens before making a decision on issuing the permit.

**Beacon HCP**

The applicant is proposing to construct, operate, and maintain a 250-megawatt (MW) renewable-energy solar thermal powerplant for 45 years on approximately 2,030 contiguous acres of retired agricultural land and Mojave desert scrub land. Specific covered activities associated with project construction include: deep trenching, grading, and filling to prepare the site for the installation of an array of solar collectors, construction of power generating equipment, cooling towers, evaporation ponds, administrative buildings, an interconnecting transmission line, an underground natural gas pipeline (or propane tanks on site); constructing and maintaining access roads, rechanneling a wash from the project site to the perimeter of the site, and constructing a fence around most of the 2,030 acre project site. Specific activities associated with operation and maintenance of the solar project include: maintaining roads, washing and replacing solar collectors, maintaining the rerouted channel, replacing electrical transmission line components, maintaining fences, and removal of all vegetation on the 2,030 acres. Construction is expected to take up to 36 months. Facility operation is proposed for approximately 30 years. The facility decommissioning and habitat rehabilitation is expected to be completed before the end of the proposed 45-year permit term.

The solar power plant would use an array of solar collectors, to track the sun's movement and collect solar energy. Energy collected from the solar collectors would heat transfer fluid in a linear receiver to generate steam that drives a steam turbine to generate electrical power. The power would be carried from the 2,030-acre project site to an existing Los Angeles Department of Water and Power (LADWP) high-voltage transmission line by an interconnecting transmission line. A wet cooling tower would be constructed to provide cooling for the power generating equipment. The applicant anticipates that potential sources of water for construction, operation, and decommissioning of the Beacon Solar Facility would include using existing wells on the property previously used for irrigating crops, and/or drilling new wells near Koehn Dry Lake, and/or using tertiary treated waste water discharged from the wastewater treatment facilities located in the cities of Rosamond and/or California City. A lined 10-to-40-acre evaporation pond would be used to collect the waste stream from the project's cooling water system. The evaporation pond would use the sun's energy to remove water from the cooling system waste, after which, the concentrated, dewatered solid waste would be transported off site for disposal, likely to a disposal site already permitted by the State of California.

The solar array field and natural gas pipeline, as well as part of the interconnecting transmission line and related power plant facilities, would be located east of State Route 14, while a relatively small area west of the highway would be used for the remaining portion of the interconnecting transmission line with an existing LADWP high-voltage transmission line at LADWP's existing Barren Ridge Switching Station. The proposed facilities would be located within a 100-year flood plain.

Species proposed for coverage in the Beacon HCP are those that occur within the HCP Planning Area, may be affected by the proposed covered activities, and are currently listed as federally threatened or endangered or may become federally listed during the term of the proposed permit. The Beacon HCP proposes to addresses three covered species: The federally threatened desert tortoise (*Gopherus agassizii*), the State threatened Mohave ground squirrel (*Spermophilus mohavensis*), and the State species of special concern western burrowing owl (*Athene cunicularia*). The construction, operation, maintenance, and decommissioning (disassembly) of the proposed project and rehabilitation (habitat restoration) of the proposed project site would likely result in incidental take of the desert tortoise, as well as impacts to the Mohave ground squirrel and western burrowing owl. Therefore, these three species are proposed to be covered in the Beacon HCP. Take may occur from vehicle collisions, capture and handlings of protected species to move them from harm's way, and attraction of common ravens (predators to desert tortoises) to the project site by food, water, and trash from human sources. The potential risk to migratory birds of toxic salts in evaporation ponds is an additional biological issue.

The area proposed for the solar array would be located in an area previously used for intensive agriculture. This area does not provide suitable habitat to support the desert tortoises. A small portion of the proposed project, the interconnecting transmission line from the solar array to an existing high-voltage transmission line, is located in suitable habitat that is occupied by desert tortoises. The proposed Beacon HCP would provide for the long-term conservation and management of the covered species and their habitats within the HCP's planning area. The applicant is presently proposing to preserve in perpetuity 115 to 118 acres of suitable Mohave ground squirrel habitat at an off-site location. This 115-to-118-acre preserve would also include approximately 25 acres of suitable desert tortoise habitat as well as 20 acres of suitable western burrowing owl habitat. In addition, the applicant is proposing a 6-acre on site conservation easement for the western burrowing owl.

**National Environmental Policy Act**

The EA or EIS will consider the effects of issuing an incidental take permit for the proposed HCP and for a reasonable range of alternatives. These alternatives might vary by the location of the solar energy project; the number of covered species; the covered activities; different strategies for avoiding, minimizing, and mitigating the impacts of incidental take; the amount of land preserved or restored; the type of species conservation efforts; or a combination of these factors. A detailed description of all reasonable alternatives, including the proposed action, will be included in the EA or EIS. A No-Action alternative will be included in the analysis of the alternatives considered.

The EA or EIS will identify all direct, indirect, and cumulative impacts of the proposed action and each alternative on the significant issues identified through this public scoping process; these issues will likely concern biological resources, land use, air quality, water resources, ground water, cultural resources, socioeconomics, visual resources, noise, traffic, geology, and soils. The proposed action and each alternative will identify

avoidance, minimization, and mitigation measures to reduce environmental impacts, and will mitigate species incidental-take to the maximum extent practicable.

We anticipate that a draft EA or draft EIS and the associated draft Beacon Solar Energy Project HCP will be available in late 2009 and will have a public review period. The preparation and public review of the EA or EIS will be conducted in accordance with the requirements of NEPA, its implementing regulations (40 CFR 1500–1508; found at (*http://www.legal.gsa.gov*), other applicable Council on Environmental Quality regulations and NEPA guidance and our policies and procedures on compliance with those laws and regulations.

We furnish this notice in accordance with 40 CFR 1501.2, 1501.7 1506.6, and 1508.22 to obtain suggestions, comments, and useful information from other agencies and from the public on the scope of the EA or EIS, including identification of significant issues deserving of study, the range of actions, the range of alternatives, and the range of impacts to be considered. We welcome written comments from all interested parties to ensure that the full range of issues related to the permit request is identified. You may submit written comments by mail or facsimile transmission (see **ADDRESSES**). All comments we receive, including names and addresses, will become part of the official administrative record for this NEPA document. Before including your address, phone number, e-mail address, or other personal identifying information in your scoping comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

**Ken McDermond,**

*Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. E9–14215 Filed 6–16–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R5–R–2009–N0102; BAC–4311–K9–S3]**

### Great Bay National Wildlife Refuge, Rockingham County, NH

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) document for Great Bay National Wildlife Refuge (NWR). We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

**DATES:** To ensure consideration, we must receive your written comments by July 17, 2009. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process. A public scoping meeting will be held early in the CCP development process. The date, time, and place for the meeting will be announced in the local media.

**ADDRESSES:** Send comments, questions, and requests for information to: Great Bay National Wildlife Refuge, c/o Parker River NWR, 6 Plum Island Turnpike, Newburyport, MA 01950; 978–465–5753 (phone); 978–465–2807 (fax); *fw5rw_prnwr@fws.gov* (e-mail); *http://www.fws.gov/northeast/parkerriver* (Web site).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mao Lin, Assistant Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035; 413–253–8556 (phone); 413–253–8468 (fax); *northeastplanning@fws.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

## Introduction

With this notice, we initiate our process for developing a CCP for Great Bay NWR in Rockingham County, New Hampshire, which includes a conservation easement in Merrimack County, New Hampshire. Both units are managed by Parker River NWR in Essex County, Massachusetts. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

## Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each refuge of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreational opportunities that are compatible with the refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments; other Federal agencies, organizations, refuge neighbors, and the public. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Great Bay NWR.

We will conduct the environmental review of this project and develop an environmental assessment in

accordance with the requirements of the NEPA, as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Great Bay NWR, which encompasses 1,089 acres, was established in 1992 to encourage natural diversity, protect listed species, and preserve and enhance water quality. The refuge is located on a portion of the former Pease Air Force Base. Despite past land uses, including active military operations, the refuge has a diversity of habitat types including oak-hickory forest, grasslands, shrub thickets, fresh and saltwater wetlands, and open water habitats. The refuge includes 7 miles of shoreline and is the largest parcel of protected land on Great Bay. In addition, Great Bay NWR includes a 28-acre conservation easement in Concord, New Hampshire, with a mix of open pitch pine-scrub, pine-hardwood, and other scrubland. The easement is managed primarily for the federally endangered Karner blue butterfly. Since 2008, Great Bay NWR and the Karner blue butterfly easement have been managed by Parker River NWR in Newburyport, Massachusetts.

### Public Availability and Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: May 22, 2009.

**James G. Geiger,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.*

[FR Doc. E9–14222 Filed 6–16–09; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Compact.

**SUMMARY:** This notice publishes approval of the 2009 Amendments to the Lac du Flambeau Band of Lake Superior Chippewa Indians (''Tribe'') and the State of Wisconsin Gaming Compact of 1991.

**DATES:** *Effective Date:* June 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows the Tribe to play poker and other card games; pari-mutuel, keno, craps and other dice games; roulette, big wheel and other wheel games; and electronic and video facsimile versions of any authorized game. This Amendment also allows for a 25-year term limit with an automatic 25-year renewal unless served notice of nonrenewal.

Dated: June 9, 2009.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E9–14260 Filed 6–16–09; 8:45 am]

BILLING CODE 4310–4N–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R4–ES–2008–NOXXX; 40120–1113–0000–C2]**

## Notice of Availability of the Puerto Rican Parrot Recovery Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the revised recovery plan for the Puerto Rican Parrot (*Amazona vittata*). The revised recovery plan includes specific recovery objectives and criteria to be met in order to reclassify this species to threatened status and delist it under the Endangered Species Act of 1973, as amended (Act).

**ADDRESSES:** You can obtain copies of the Puerto Rican Parrot Recovery Plan by contacting the Río Grande Field Station, U.S. Fish and Wildlife Service, P.O. Box 1600, Río Grande, Puerto Rico 00745 (telephone (787) 887–8769 Ext. 224) or by visiting our Web site at *http://endangered.fws.gov/recovery/index.html#plans.*

**FOR FURTHER INFORMATION CONTACT:** Marisel López at the above address (Telephone 787/887–8769, ext. 224).

**SUPPLEMENTARY INFORMATION:**

### Background

Once abundant and widespread on the Puerto Rican archipelago, the Puerto Rican parrot is considered one of the ten most endangered birds in the world. Largely green with a red forehead and blue flight feathers, the parrot is one of nine *Amazona* parrots occurring in the West Indies. The species is one of the smallest in its genus. Presently, a minimum of 25–28 individuals survive in the wild in the El Yunque National Forest (YNF) in eastern Puerto Rico and 22–28 in the Río Abajo Forest (RAF) in north central Puerto Rico. Two captive population facilities hold more than 228 individuals: the Iguaca Aviary and the José L. Vivaldi Aviary in eastern and west-central Puerto Rico, respectively.

The Puerto Rican parrot is a fruit-eating cavity nester seldom seen far from forests. Due to its nesting requirements, it depends on mature forests with large cavity-forming trees. The decline of the parrot and its restricted distribution are due to many factors, but mostly due to widespread habitat loss (*e.g.,* deforestation.)

At present, in addition to low numbers and a limited distribution, major threats to this species are nest competition and predation of eggs and chicks, predation of fledglings and adults, parasitism, and the impact of hurricanes. Many of the threats are being controlled through management strategies.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act (16 U.S.C. 1533 *et seq.*) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We made the draft

revision of the Puerto Rican Parrot recovery plan available for public comment from June 17, 2008 through August 18, 2008 (73 FR 34313). We considered information we received during the public comment period and information from peer reviewers in our preparation of this final revised recovery plan. We will forward substantive comments to other Federal agencies so each agency can consider these comments in implementing approved recovery plans.

The objective of this revised plan is to provide a framework for the recovery of the Puerto Rican parrot, so that protection under the Act is no longer necessary. The plan presents criteria for reclassifying and delisting the parrot. As these criteria are met, the status of the species will be reviewed and it will be considered for reclassification or removal from the Federal List of Endangered and Threatened Wildlife and Plants.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: April 14, 2009.

**Jacquelyn B. Parrish,**

*Acting Regional Director.*

[FR Doc. E9–14217 Filed 6–16–09; 8:45 am]

**BILLING CODE 4310–55–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–629]**

## In the Matter of Certain Silicon Microphone Packages and Products Containing the Same; Notice of Commission Final Determination of Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) by respondent MEMS Technology Berhad of Malaysia (''MemsTech'') in the above-captioned investigation. The Commission has issued a limited exclusion order against the respondent and has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. 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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 14, 2008, based on the complaint of Knowles Electronics, LLC of Itasca, Illinois (''Knowles''). 73 FR 2277 (Jan. 14, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon microphone packages or products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,781,231 (''the '231 patent''), and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089 (''the '089 patent''). The only named respondent is MemsTech.

The evidentiary hearing in this investigation was held on September 22–25, 2008. On January 12, 2009, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding a violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

The Commission determined to review various portions of the final ID and issued a Notice to that effect dated March 13, 2009. 74 FR 11748 (Mar. 19, 2009). In the Notice, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

On review, the Commission has determined as follows.

(1) With respect to the '231 patent:

(a) To affirm with modifications the ALJ's finding that MemsTech's accused products infringe claims 1 and 2 of the '231 patent;

(b) to affirm with modifications the ALJ's determination that claims 1 and 2 of the '231 patent are not invalid due to anticipation or obviousness;

(2) With respect to the '089 patent:

(a) to affirm the ALJ's construction of the term ''electrically coupled'';

(b) to affirm with modifications the ALJ's construction of the term ''volume;''

(c) to affirm with modifications the ALJ's finding that MemsTech accused products infringe the asserted claims of the '089 patent;

(d) to affirm the ALJ's determination that Knowles SiSonic products practice claim 1 of the '089 patent;

(e) to affirm with modifications the ALJ's determination that the asserted claims of the '089 patent are not invalid due to anticipation or obviousness;

(f) to affirm the ALJ's determination that evidence shows that the commercial success of the SiSonic products is attributable to the '089 patent.

(3) to affirm the ALJ on any other findings under review except insofar as they are inconsistent with the opinion of the Commission.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of silicon microphone packages and products containing same that infringe claims 1 and 2 of U.S. Patent No. 6,781,231 and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, MemsTech.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that there should be no bond during the period of Presidential review. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has therefore terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41-.42, 210.50 of the Commission's

Rules of Practice and Procedure (19 CFR 210.41-.42, 210.50).

By order of the Commission.
Issued: June 12, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–14204 Filed 6–16–09; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–678]**

## In the Matter of Certain Energy Drink Products; 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 May 15, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Red Bull GmbH of Austria and Red Bull North America, Inc. of Santa Monica, California. The complainants filed a letter supplementing the complaint on June 1, 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 energy drink products that infringe U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607 and U.S. Copyright Registration No. VA0001410959. The 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 a general exclusion order and cease and desist orders.

**ADDRESSES:** The complaint and supplement, except for any confidential information contained therein, are 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:** Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

*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 (2009).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 11, 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:

(a) 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 energy drink products by reason of infringement of U.S. Copyright Registration No. VA0001410959, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) whether there is a violation of subsection (a)(1)(C) 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 energy drink products by reason of infringement of U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; or 3,479,607, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(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—

Red Bull GmbH, Am Brunnen 1, Fuschl am See, 5330 Austria;

Red Bull North America, Inc., 1740 Stewart Street, Santa Monica, CA 90404.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chicago Import Inc., 3801–11 West Laurence Avenue, Chicago, IL 60625;

Lamont Dist., Inc., a/k/a Lamont Distributors Inc. 5 Lamont Court Suite 3Am, Brooklyn, NY 11225;

India Imports, Inc., a/k/a International Wholesale Club, 2901 Richland Avenue, Metairie, LA 70002;

Washington Food and Supply of D.C., Inc., a/k/a Washington Cash & Carry, 1270 4th Street NE., Washington, DC 20002;

Vending Plus, Inc., 2409 Peppermill Drive, Unit J, Glen Burnie, MD 21061;

Baltimore Beverage Co., 2409 Peppermill Drive., Unit J, Glen Burnie, MD 21061.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, 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, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: June 12, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–14205 Filed 6–16–09; 8:45 am]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Evidence.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

**DATES:** November 20, 2009.

*Time:* 8:30 a.m. to 5 p.m.

**ADDRESSES:** The Planters Inn, 112 North Market Street, Charleston, South Carolina 29401.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: June 11, 2009.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. E9–14132 Filed 6–16–09; 8:45 am]

**BILLING CODE 2210–55–M**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** November 5–6, 2009.

*Time:* 8:30 a.m. to 5 p.m.

**ADDRESSES:** The Fairmount Olympic Hotel, 411 University Street, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: June 11, 2009.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. E9–14133 Filed 6–16–09; 8:45 am]

**BILLING CODE 2210–55–M**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Committee on Rules of Criminal Procedure

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** October 13–14, 2009.

*Time:* 8:30 a.m. to 5 p.m.

**ADDRESSES:** The Fairmount Olympic Hotel, 411 University Street, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: June 11, 2009.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. E9–14135 Filed 6–16–09; 8:45 am]

**BILLING CODE 2210–55–M**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Consumer Price Index Housing Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 17, 2009.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, telephone 202–691–7628. (*See* **ADDRESSES** Section.)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Consumer Price Index (CPI) is the timeliest instrument compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and is used in the formulation of economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

#### II. Current Action

Office of Management and Budget clearance is being sought for the CPI Housing Survey. This request addresses both the ongoing collection activities associated with compilation of the shelter component of the Consumer Price Index and the augmentation of the sample requiring the creation of new segments of rental dwellings in all 87 Primary Sampling Units (PSUs). This action assures the ongoing activities of rent data collection and updates the sample such that the estimates are sufficient and less likely to be biased.

#### III. Desired Focus of Comments

*The Bureau of Labor Statistics is particularly interested in comments that:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• 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 submissions of responses.

*Type of Review:* Extension.

*Agency:* Bureau of Labor Statistics.

*Title:* CPI Housing Survey.

*OMB Number:* 1220–0163.

*Affected Public:* Individuals or households; business or other for-profit.

*Total Respondents:* 126,895.

*Frequency:* Semi-annually.

*Total Responses:* 125,575.

*Average Time per Response:* 5.92 minutes.

*Estimated Total Burden Hours:* 12,390 hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of June 2009.

**Kimberley D. Hill,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E9–14210 Filed 6–16–09; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting; Agenda

**TIME AND DATE:** 9:30 a.m., Tuesday, June 30, 2009.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

| | |
|---|---|
| 8116 .... | Aircraft Accident Summary Report—Ground Fire Aboard Cargo Airplane, ABX Air Flight 1611, Boeing 767–200, N799AX, San Francisco, California, June 28, 2008. |

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, June 26, 2009.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR MORE INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410.

Dated: June 12, 2009.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. E9–14372 Filed 6–15–09; 4:15 pm]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee On Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 8–10, 2009, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 6, 2008, (73 FR 58268–58269).

**Wednesday, July 8, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10 a.m.: License Renewal Application and the Final Safety Evaluation Report for the Beaver Valley Power Station* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the First Energy Nuclear Operating Company regarding the License Renewal Application for the Beaver Valley Power Station, the associated NRC staff's final Safety Evaluation Report, and related matters.

*10:15 a.m.–11:45 a.m.: Draft Final Regulatory Guide 1.215, ''Guidance for ITAAC Closure under 10 CFR Part 52''* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final Regulatory Guide 1.215 that provides guidance for closure of Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) and related matters.

*12:45 p.m.–2:45 p.m.: Applicability of TRACE Code to Analyze the ESBWR Stability* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding applicability of the TRACE Code to analyze the stability of the Economic Simplified Boiling Water Reactor (ESBWR) design, and related matters. [**Note:** A portion of this Session may be closed pursuant to 5 U.S.C. 552b (c)(4), to protect information that is proprietary to General Electric-Hitachi, or its contractors.]

*3 p.m.–4 p.m.: Format and Content of the Biennial Research Report to the Commission on the NRC Safety Research Program* (Open)—The Committee will discuss the format and content of the ACRS Biennial Report to the Commission on its review and evaluation of the NRC Safety Research Program, and related matters.

*4:15 p.m.–7 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

**Thursday, July 9, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Design Certification (DC)/Combined License (COL) Interim Staff Guidance (ISG)–006 and Nuclear Energy Institute (NEI) Document NEI 08–08, Revision 1* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding DC/COL–ISG–006, ''Interim Staff Guidance on Evaluation and Acceptance Criteria for 10 CFR 20.1406 to Support Design Certification and Combined License Applications,'' and NEI 08–08, Revision 1, ''Generic FSAR Template Guidance for Life Cycle Minimization of Contamination,'' and related matters.

*10:45 a.m.–12:15 p.m.: Draft Final Revision 3 to Regulatory Guide 1.100, ''Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants''* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final Revision 3 to Regulatory Guide 1.100, ''Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants,'' and related matters.

*1:15 p.m.–1:45 p.m.: Quality Assessment of Selected Research Projects* (Open)—The Committee will discuss the draft final report on ACRS assessment of the quality of the NRC research projects on: NUREG/CR–6964, ''Crack Growth Rates and

Metallographic Examinations of Alloy 600 and Alloy 82/182 from Field and Laboratory Materials Testing in PWR Environments,'' and Draft NUREG/CR–XXXX, ''Diversity Strategies for Nuclear Power Plant Instrumentation and Control Systems.''

*1:45 p.m.–2:15 p.m.: Subcommittee Reports* (Open)—The Committee will hear reports by and hold discussions with the Chairmen of the ESBWR and the Plant License Renewal Subcommittees regarding: The resolution of containment issues associated with the ESBWR design certification and selected Chapters of the draft SER associated with the North Anna COL application referencing the ESBWR design that were discussed on June 17–18, 2009; and the Prairie Island License Renewal Application and the NRC staff's Safety Evaluation Report with Open Items that were discussed on July 7, 2009, respectively.

*2:15 p.m.—3 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future ACRS meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this session may be closed pursuant to 5 U.S.C.552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of AC and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

*3 p.m.–3:15 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

*3:30 p.m.–7 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Friday, July 10, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–6 p.m.: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d), Public Law 92–463, I have determined that it may be necessary to close a portion of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6). In addition it may be necessary to close a portion of the meeting to protect information proprietary to General Electric-Hitachi or its contractors pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Girija Shukla, Cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 11, 2009

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E9–14235 Filed 6–16–09; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0142]**

## State of New Jersey: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a proposed Agreement with the State of New Jersey.

**SUMMARY:** By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires

that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

**DATES:** The comment period ends June 26, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

**ADDRESSES:** Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB–05–B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov.* Search on Docket ID: [NRC–2009–0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

**FOR FURTHER INFORMATION CONTACT:** Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7900 or e-mail to *torre.taylor@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

## I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) Product materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials; and (f) special nuclear materials, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D–1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State-issued licenses.

The State currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the **Federal Register** on October 19, 2007 (72 FR 59158). Under the proposed

Agreement, the State would assume regulatory authority for these radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short time frame (*i.e.,* about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

**II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials**

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement'' (available at *http://nrc-stp.ornl.gov/procedures/sa700.pdf* and *http://nrc-stp.ornl.gov/procedures/sa700_hb.pdf*).

(a) Organization and Personnel. The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D–7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other persons. The State waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) Transportation of Radioactive Material. The State has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or

accidents involving Agreement materials.

(f) Evaluation of License Applications. The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State laws provide for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJDEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provide exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

## III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an Agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16, 2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and meets the requirements of Section 274 of the Act.

Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 9th day of June, 2009.

For the Nuclear Regulatory Commission.

**Terrence Reis,**

*Deputy Director, National Materials Program Directorate, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.*

## APPENDIX A

**An Agreement Between the United States Nuclear Regulatory Commission and the State of New Jersey for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act Of 1954, as Amended**

*Whereas,* The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

*Whereas,* The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D–1, to enter into this Agreement with the Commission; and,

*Whereas,* The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

*Whereas,* The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

*Whereas,* The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

*Whereas,* The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

*Whereas,* This Agreement is entered into pursuant to the provisions of the Act;

*Now, therefore,* It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

**Article I**

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

**Article II**

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

**Article III**

With the exception of those activities identified in Article II, paragraphs 1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

**Article IV**

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

**Article V**

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

**Article VI**

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

**Article VII**

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

**Article VIII**

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

**Article IX**

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Gregory B. Jaczko, Chairman.

Done at Trenton, New Jersey this [date] day of [month], [year].

For the State of New Jersey.

Jon S. Corzine, Governor.

[FR Doc. E9–14110 Filed 6–16–09; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Extension of Existing Collection; Comment Request

*Upon written request, copies available from:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–15, OMB Control No. 3235–0409, SEC File No. 270–360.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17aAd–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires approximately 587 transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason

for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 587 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 23,480 hours. The average cost per hour is approximately $50. Therefore, the total cost of compliance for all transfer agents is $1,174,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14149 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Extension of Existing Collection; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 17f–1(c) and Form X–17F–1A, OMB Control No. 3235–0037, SEC File No. 270–29.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17f-1(c) and Form X–17F–1A (17 CFR 249.100) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f-1(c) (17 CFR 240.17f-1(c)) requires approximately 26,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A (17 CFR 249.100) facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

We estimate that 26,000 reporting institutions will report that securities are either missing, lost, counterfeit, or stolen annually and that each reporting institution will submit this report 50 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f-1(c) and Form X–17F–1A is five minutes. The total burden is 108,333 hours annually for respondents (26,000 times 50 times 5 divided by 60).

*Written comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14150 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 35d–1; SEC File No. 270–491; OMB Control No. 3235–0548.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 35d–1 (17 CFR 270.35d–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) generally requires that investment companies with certain names invest at least 80% of their assets according to what their names suggests. The rule provides that an affected investment company must either adopt this 80% requirement as a fundamental policy or adopt a policy to provide notice to shareholders at least 60 days prior to any change in its 80% investment policy. This preparation and delivery of the notice to existing shareholders is a collection of information within the meaning of the Act.

The Commission estimates that there are 8,681 open-end and closed-end management investment companies and series that have descriptive names that are governed by the rule. The Commission estimates that of these 8,681 investment companies, approximately 29 provide prior notice to their shareholders of a change in their investment policies per year. The Commission estimates that the annual burden associated with the notice requirement of the rule is 20 hours per response. The total burden hours for Rule 35d–1 is 580 per year in the aggregate (29 responses × 20 hours per response). Estimates of average burden

hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 35d–1 is mandatory. The information provided under Rule 35d–1 is not kept confidential. The Commission 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 9, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14190 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form 18, OMB Control No. 3235–0121, SEC File No. 270–105.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Form 18 (17 CFR 249.218) is used for the registration of securities of any foreign government or political subdivision on a U.S. exchange. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of the information. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total of 40 annual burden hours. It is estimated that 100% of the total reporting burden is prepared by the company.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14174 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form F–80; OMB Control No. 3235–0404; SEC File No. 270–357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Form F–80 (17 CFR 239.41) is used by large, publicly-traded Canadian foreign private issuers registering securities that are offered in business combinations and exchange offers. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of the information. Form F–80 takes approximately 2 hours per response and is filed by 4 issuers for a total annual burden of 8 hours. The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14175 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Rules 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citations to this collection of information are the following rules: 17 CFR 240.17h–1T and 17 CFR 240.17h–2T under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'').

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities is reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 148 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 148 respondents require approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 1,480 hours (148 respondents × 10 hours). In addition, each of these 148 respondents must make five annual responses under Rule 17h–2T. These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 2,072 hours (148 respondents × 14 hours). In addition, there are approximately five new respondents per year [1] that must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the Rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the Rules requires three hours, thus requiring an aggregate of 20 hours (5 new respondents × 4 hours). Thus, the total compliance burden per year is approximately 3,572 burden hours (1,480 + 2,072 + 20).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14176 Filed 6–16–09; 8:45 am]

BILLING CODE 8010–01–P

[1] However, the staff further estimates that the number of respondents decreases by at least that many firms per year as a result of mergers and other business factors.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28766; File No. 812–13499]**

### X Exchange-Traded Funds, Inc., et al.; Notice of Application

June 11, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to amend a prior order that permits: (a) Series of open-end management investment companies to issue shares (''Shares'') redeemable only in large aggregations (''Creation Units''); (b) secondary market transactions in the Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units (''Prior Order'').[1] Applicants seek to amend the Prior Order in order to provide that (a) a series will invest at least 80%, rather than 90%, of its total assets in the component securities (''Component Securities'') of its underlying index (''Underlying Index''); (b) the Underlying Index may be reconstituted and rebalanced no more frequently than on a monthly, rather than on a quarterly, basis (''Monthly Reconstitution''); and (c) the Indicative Optimized Portfolio Value (as defined below) may be calculated and disseminated by a national securities exchange (''Exchange'') or by a major market data vendor. Applicants also seek to amend the Prior Order to delete the relief granted in the Prior Order from section 24(d) of the Act and revise the applications on which the Prior Order was issued (''Prior Applications'') accordingly and to amend the terms and conditions of the Prior Applications with respect to certain disclosure requirements.

**APPLICANTS:** X Exchange-Traded Funds, Inc. (''X Funds''); XShares Advisors LLC (formerly, X–Shares Advisors, LLC) (the ''Advisor''); XShares Group, Inc. (formerly, Ferghana-Wellspring LLC); and TDX Independence Funds, Inc. (formerly, TDAX Funds, Inc.) (''TDX Funds'').

**FILING DATES:** The application was filed on November 9, 2007, and amended on

[1] HealthShares, Inc., *et al.,* Investment Company Act Release Nos. 27553 (November 16, 2006) (notice) and 27594 (December 7, 2006) (order), as amended by HealthShares, Inc., *et al.,* Investment Company Act Release Nos. 27916 (July 27, 2007) (notice) and 27930 (August 20, 2007) (order).

April 1, 2008, January 27, 2009 and April 20, 2009.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 6, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* Attn. David W. Jaffin, 420 Lexington Avenue, Suite 2550, New York, NY 10170, and Domenick Pugliese, Esq., Paul, Hastings, Janofsky & Walker LLP, Park Avenue Tower, 75 East 55th Street, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Applicants' Representations

1. TDX Funds, organized as a Maryland corporation, is registered under the Act as an open-end management investment company and is comprised of five series. X Funds, organized as a Maryland corporation, is an open-end management investment company and is comprised of two series, including the Nations Large Cap Enhanced Covered Call ETF (the ''Nations Fund''). The Advisor, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves or will serve as investment adviser to the Funds (defined below). XShares Group, Inc., a Delaware corporation, is the parent company of the Advisor.

2. Applicants currently are permitted to offer series that operate pursuant to the Prior Order, as well as series that may be created in the future and are advised by the Advisor or an entity controlled by or under common control with the Advisor and that comply with the terms and conditions of the Prior Order (''Future Funds,'' together with the TDX Funds and X Funds, the ''Funds''). Applicants state that all representations and conditions contained in the Prior Applications would apply to the Funds, except as described in the current application, as summarized in this notice.

3. Applicants state that the Nations Fund requires the requested relief in order to operate in accordance with its intended investment strategy. The Nations Fund employs a ''passive management'' investment strategy designed to track the performance, before fees and expenses, of the NationsShares Large Cap Enhanced Covered Call Index (the ''NationsShares Index''). The Prior Order provides that each Fund would invest at least 90% of its total assets in Component Securities of its Underlying Index. Applicants wish to amend the Prior Order to provide that each Fund, including the Nations Fund, must invest at least 80% of its total assets in the Component Securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index. Under this approach, the Nations Fund may invest up to 20% of its assets in certain futures, options and swap contracts, as well as cash and cash equivalents. Applicants expect that the returns of a Fund should continue to be highly correlated with the returns of its Underlying Index, expecting that the correlation coefficient between a Fund and its Underlying Index will at least be 95% over extended periods.

4. In the Prior Order, the specific criteria for determining the Component Securities in each Underlying Index (the ''Index Composition Methodology'') provides that the Underlying Indexes will be reconstituted no more frequently than quarterly. The Nations Fund seeks to replicate the NationsShares Index, an index that is reconstituted monthly. Applicants seek to amend the Prior Order to permit the Funds to use an Underlying Index that may be reconstituted as frequently as monthly. Applicants believe that the Monthly Reconstitution will not have any impact on the operation of the Funds or the efficiency of the Funds' arbitrage mechanism. Because the Index Composition Methodology is published and transparent, and because any changes to the Index Composition Methodology must be published 60 days in advance of implementation, information about the current constituents of each Underlying Index, and potential changes to the list of current constituents as a result of any reconstitution, will be readily ascertainable by market participants.

5. The Prior Order currently represents that the Indicative Optimized Portfolio Value (''IOPV'') will be calculated and disseminated widely every 15 seconds by the Exchange.[2] Applicants seek to amend the Prior Order to permit the calculation and/or dissemination of the IOPV either by the Exchange or by a major market data vendor. The IOPV will be calculated by the Exchange or a major market data vendor every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds by such entity. Applicants contend that this will provide the Fund with additional flexibility to engage vendors with the appropriate expertise and resources to most accurately and efficiently calculate and disseminate the Fund's IOPV. Applicants believe that the IOPV will have visibility comparable to that which would be obtained had it been calculated by the Exchange. In either case, the IOPV will continue to be disseminated on the consolidated tape.

6. Applicants seek to amend the terms and conditions of the Prior Applications to provide that all representations and conditions contained in the Prior Applications that require a Fund to disclose particular information in the Fund's prospectus (''Prospectus'') and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009) (''Summary Prospectus Rule''). Applicants state that such amendment is warranted because the Commission's amendments to Form N–1A with regard to exchange-traded funds as part of the Summary Prospectus Rule reflect the Commission's view with respect to the appropriate types of prospectus and annual report disclosures for an exchange-traded fund.

[2] As described in the Prior Applications, the IOPV represents the sum of the current value of the Deposit Securities and the estimated Cash Requirement, on a per Share basis. The ''Deposit Securities'' are the securities that have been selected by the Advisor or Sub-Advisor to correspond generally to the performance of the relevant Underlying Index. The ''Cash Requirement'' is the cash payment needed to equalize any differences between the market value of the Deposit Securities per Creation Unit and the net asset value (''NAV'') per Creation Unit.

7. Applicants also seek to amend the Prior Order to delete the relief granted from section 24(d) of the Act. Applicants state that the deletion of the exemption from section 24(d) that was granted in the Prior Order is warranted because the adoption of the Summary Prospectus Rule should supplant any need by a Fund to use a product description (''Product Description''). The deletion of the relief granted with respect to section 24(d) of the Act from the Prior Order will also result in the deletion of related discussions in the Prior Applications, revision of the Prior Applications to delete references to Product Descriptions including in the conditions, and the deletion of condition 7 of the Prior Order.

**Applicants' Conditions**

Applicants agree that any amended order of the Commission granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 7 to the Prior Order, which will be deleted, and conditions 2 and 5, which are revised as follows: [3]

Condition 2. Each Fund's Prospectus will clearly disclose that, for the purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that a registered investment company enter into an agreement with the Fund regarding the terms of the investment.

Condition 5. The Web site maintained for the Corporation, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14192 Filed 6–16–09; 8:45 am]

BILLING CODE 8010–01–P

[3] All representations and conditions contained in the application and the Prior Applications that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009). Defined terms used in the following conditions that are not otherwise defined in this notice or the application have the same meanings as in the Prior Applications.

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1 ]**

## Hunt Gold Corporation, F/K/A Prime Time Group, Inc.; Order of Suspension of Trading

June 15, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hunt Gold Corporation, f/k/a Prime Time Group, Inc. (''Hunt Gold'') because questions have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things, Hunt Gold's gold mining exploration business.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Hunt Gold.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Hunt Gold securities is suspended for the period from 9:30 a.m. EDT on June 15, 2009, through 11:59 p.m. EDT on June 26, 2009.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E9–14300 Filed 6–15–09; 4:15 pm]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60077; File No. SR–NYSEAmex–2009–22]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Amex, Inc. Implementing Schedule of Fees and Charges for Exchange Services

June 9, 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 June 1, 2009, NYSE Amex LLC. (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While the change to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative June 1, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form.[4] A copy of this filing is available on the Exchange's Web site at *www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to modify the list of strategies presently included in the strategy execution fee cap program (''Strategy Cap Program''). NYSE Amex proposes to add ''Jelly Rolls'' as an eligible strategy execution for inclusion in Strategy Cap Program.

A Jelly Roll is a long calendar call spread combined with the same short

[4] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Commission's Public Reference Room and at *www.nyse.com.*

calendar put spread, or vice versa. This option strategy aims to profit from a time value spread through the purchase and sale of two call and two put options, each with different expiration dates. A Jelly Roll is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but a different expiration from the first position. Below is an example of a Jelly Roll strategy execution.

XYZ Jun/Oct 25 Jelly Roll:

—Buy XYZ Jun 25 put and sell XYZ Jun 25 call

—Sell XYZ Oct 25 put and buy XYZ Oct 25 call

Market BBO:

Jun 25 call .51 at .53

Jun 25 put .72 at .74

Oct 25 call 1.52 at 1.55

Oct 25 put 2.35 at 2.39

.74(long Jun put) + 1.52 (long Oct call) − .51 (short Jun call) − 2.35 (short Oct put) = .60 credit received for the Jelly roll.

Because the referenced Jelly Rolls are commonly executed in large volumes with profit margins that are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at $750 per strategy execution on the same trading day in the same option class. In addition, Jelly Rolls will be included in the monthly cap of $25,000 per initiating firm for all strategy executions. NYSE Amex believes that by keeping fees low, the Exchange is able to attract liquidity by accommodating these transactions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [5] of the Act and subparagraph (f)(2) of Rule 19b–4 [6] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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–NYSEAmex–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–NYSEAmex–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, 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2009–22 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

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[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60063; File No. SR–OCC–2009–10]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Cross-Margining Agreement Between OCC and CME

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on May 22, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act [2] and Rule 19b–4(f)(1) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

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 change the definition of the term ''Eligible Contracts'' as used in the cross-margining agreement (''XM Agreement'') between OCC and the Chicago Mercantile Exchange Inc. (''CME'') and delete Exhibit A to the Agreement.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC 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*

Pursuant to an OCC rule change approved by the Commission in 2008, OCC no longer must notify the Commission when OCC wishes to add new options classes to a cross-margining program.[4] With this requirement no longer in effect, OCC and CME have executed Amendment No. 2 to the XM Agreement to accomplish two purposes. First, the term ''Eligible Contracts'' as used in the XM Agreement will be redefined. Second, Exhibit A of the XM Agreement, which contains the list of Eligible Contracts included in the XM Agreement, will be deleted in its entirety.[5]

OCC states that it believes that the proposed change is consistent with Section 17A of the Act[6] because it conforms the terms of the XM Agreement to the prior determination of the Commission that notice of the addition of new contracts to cross-margining programs was no longer needed or required. OCC further states that the proposed rule change is not inconsistent with the existing rules of OCC including any other rules proposed to be amended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

OCC has not solicited or received written comments with respect to the proposed rule change. OCC 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)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogated 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-comment@sec.gov*. Please include File No. SR–OCC–2009–10 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–OCC–2009–10. 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. to 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp*. 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–OCC–2009–10 and should be submitted on or before July 8, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

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[4] Securities Exchange Act Release No. 57118 (Jan. 9, 2008), 73 FR 2970 (Jan. 16, 2008) [File No. SR–OCC–2007–19].

[5] Amendment No. 2 to the XM Agreement is attached as Exhibit 5A to OCC's filing with the Commission.

[6] 15 U.S.C. 78q-1.

[7] 15 U.S.C. 78a(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60083; File No. SR–CHX–2009–02]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Rejection of Undisplayed Odd-Lot Orders From the Exchange's Matching System

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on June 2, 2009, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. 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 CHX proposes to amend its rules to allow Exchange customers to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System. Additionally, the Exchange proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled.[3] The text of this proposed rule change is available on the Exchange's Web site at (www.chx.com) and in 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 CHX 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 CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend CHX Article 20, Rule 8 to allow Exchange Participants to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System. Additionally, the Exchange proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled.

Currently, odd-lot orders and unexecuted odd-lot remainders that are not able to be immediately displayed, because they are at a better price than the current CHX quote and have no other orders with which to aggregate, remain in the Exchange's Matching System until they are executed, are aggregated with another order and displayed[4] or are cancelled. The proposed rule change would allow Exchange Participants to specify whether such orders should remain in, or be rejected from, the Exchange's Matching System. This preference could be set by the Participant on both a default and order by order basis.[5] Orders remaining in the Matching System will continue to be ranked at the price and time at which they were originally received. Orders that are rejected from the Matching System shall either be sent back to the order sender or be routed to another destination according to each Participant's instructions[6] or, if designated ''do not route,'' automatically cancelled. The Exchange also proposes that Participants that elect to have orders routed to another destination pursuant to this rule, or pursuant to Article 20, Rule 5 (''Prevention of Trade-throughs''), agree to be bound by such transactions.

Exchange Participants have requested this functionality to improve the certainty of order execution. For example, if a Participant enters a limit order to buy four hundred (400) shares into the Matching System and that order matches with an order to sell three hundred fifty (350) shares at the same price, the system would execute three hundred fifty shares leaving fifty (50) shares as an unexecuted odd-lot remainder. Currently, if there were no other round-lot orders at the same price, these shares would remain undisplayed in the Matching System; reducing the likelihood that the Participant would receive a timely execution on the remaining shares.[7] Under the proposed rule change, the Participant would be able to specify that such orders be rejected from the Matching System and either cancelled or routed to another destination with which they have an agreement.

This proposed rule change is consistent with Regulation NMS because it applies only to odd-lot orders and unexecuted odd-lot remainders. Only round-lot orders are subject to the requirements of Regulation NMS in that only round-lot orders must be included in the Exchange's automated quote.[8] In contrast, odd-lot orders are not displayed, and the prohibitions against both locked and crossed markets and trade-throughs do not apply to odd-lots. Exchanges are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders.[9]

The Exchange also proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled. The use of routing services is optional and is available only to exchange Participants.

In such cases, the Participant will be responsible for ensuring that it has a relationship with its chosen destinations to permit the requested access. The Exchange shall not have responsibility for the handling of the order by the other destination, but will report any execution or cancellation of the order by the other destination to the Participant that submitted the order, will notify the other venue of any cancellations or changes to the order submitted by the order-sending Participant and, if requested by the Participant and its chosen destination, will flip any executions into the Participants account, as necessary, and report that second leg of the away-market transaction to clearing.[10]

[3] The Exchange notes that while this rule is currently being added to clarify how undisplayed odd-lots that are rejected from the Matching System will be routed, the rule will apply to any orders that are rejected from the Matching System and routed according to Participant instructions.

[4] The Exchange notes that odd-lot orders are aggregated with other odd-lot and mixed lot orders where possible to form round lots. Additionally, odd-lot orders are considered displayed when there are other round-lot orders at the same price point which are being displayed.

[5] This system functionality already exists and can be put into production once the necessary rule change is approved.

[6] The Exchange notes that orders rejected in accordance with this rule will be routed in the same manner as those rejected under the NMS trade-through validation rule (Exchange Article 20, Rule 5, Interpretations and Policies .03), which has already been approved by the Commission.

[7] This also assumes that there are no other odd-lots at the same price with which the odd-lot could aggregate to form a round lot. *See* footnote 4, supra.

[8] Under Regulation NMS, Rule 600(b)(8) defines ''bid'' or ''offer'' as the bid price or offer price for one or more round lots of an NMS security. This definition is embedded in the definition of ''quotation'' in Rule 600(b)(62), as well as the definition of ''protected bid'' or ''protected offer'' in Rule 600(b)(57). 17 CFR 242.600(b).

[9] *See* Response No. 7.03 in ''Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS,'' Division of Trading and Markets, dated June 8, 2007.

[10] For example, if the Exchange routes a participant's buy order to the participant's chosen destination (Router ABC) and Router ABC gets an execution of that order in another market against market maker XYZ, the first leg of the transaction (ABC buying from XYZ) will be reported to clearing

The Exchange will provide its Routing Services pursuant to the proposed rule and three separate agreements, to the extent that they are applicable to a specific routing decision and deemed necessary by the Exchange and/or a third-party broker-dealer providing connectivity to other markets: (a) An agreement between the Exchange and each Participant on whose behalf orders will be routed (''Participant-Exchange Agreement''); (b) an agreement between each Participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and, if necessary, serve as a ''give-up'' in those markets (''Give-Up Agreement''); and (c) an agreement between the Exchange and the specified third-party broker-dealer (''Routing Connectivity Agreement'') pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a ''give-up'' for the Exchange's Participants in other markets. The Routing Connectivity Agreement will include terms and conditions that enable the Exchange to comply with this rule.

The Exchange will provide such Routing Services in compliance with its rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements of Sections 6(b)(4) [11] and (5) [12] of the Act that the rules of a national securities exchange provide for the equitable allocation of dues, fees and other charges among its members and issues and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[13] and furthers the objectives of Section 6(b)(5) in particular,[14] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. In this case, providing Participants the ability to have their undisplayed orders rejected from the Exchange's Matching System, to be cancelled or routed elsewhere for execution, protects investors and removes an impediment to a free and open market in that it improves the certainty of order execution.

*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 either solicited or 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.

**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–CHX–2009–02 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–CHX–2009–02. 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 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–CHX–2009–02 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

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by the other market. The Router ABC would send an execution report back to the Exchange (for routing to the original order-sending participant). Under this proposal, if the participant and Router ABC had requested, the Exchange would take the execution report and create a clearing-only record, flipping the execution from Router ABC's account to the account of the order-sending participant (ABC selling to the order-sending participant).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60085; File No. SR–FINRA–2009–030]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 6440 To Require Members To Create a Contemporaneous Record of Certain Customer and Order Information

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''SEA'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2009 Financial Industry Regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 Rules 6440 and 6540 to, among other things, require members to create a contemporaneous record of certain customer and order information demonstrating eligibility for the unsolicited customer order exception of SEA Rule 15c2–11 when the member is relying on such exception.

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*

SEA Rule 15c2–11 sets forth the information review and maintenance requirements for broker-dealers that publish quotations [3] in a quotation medium [4] for certain over-the-counter equity securities (*e.g.,* OTC Bulletin Board and Pink Sheets securities). Specifically, SEA Rule 15c2–11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a covered OTC equity security unless it has obtained and reviewed current information about the issuer whose security is the subject of the quotation that the broker-dealer believes is accurate and obtained from a reliable source. There are several exceptions to SEA Rule 15c2–11, including paragraph (f)(2) of the Rule, which excepts quotations that represent a customer's unsolicited order or indication of interest (unsolicited customer order exception).

Rule 6440 sets forth the standards applicable to member firms for demonstrating compliance with SEA Rule 15c2–11, unless an exception applies. FINRA has found that member firms maintain varying levels of documentation for demonstrating eligibility for the unsolicited customer order exception and, in some cases, are unable to produce any proof that a quote in fact represented a customer's unsolicited order or indication of interest (''IOI''). While a member relying on this or any exception should be able to proffer evidence of its eligibility for and compliance with the exception, FINRA believes that providing specific recordkeeping requirements for demonstrating eligibility for the SEA Rule 15c2–11(f)(2) exception is appropriate and will promote more uniform recordkeeping and compliance with this exception.

Specifically, contemporaneous with the receipt of any unsolicited customer order or IOI, members would be required to record the following details: the identity of the associated person who receives the order or IOI directly from the customer, if applicable; [5] the identity of the customer; the date and time the order or IOI was received; and the terms of the order or IOI that is the subject of the quotation (*e.g.,* security name and symbol, size, side of the market, the duration (if specified) and, if priced, the price). To the extent a member is displaying a quote representing an unsolicited customer order or IOI that was received from another broker-dealer, the member is still required to create a contemporaneous record of the identity of the person from whom information regarding the unsolicited customer order or IOI was received, if applicable; the date and time the unsolicited customer order or IOI was received by the member displaying the quotation; and the terms of the order that is the subject of the quotation.[6] The member displaying the quotation may rely on the information provided by the routing firm if the member has a reasonable basis for believing that the information is valid.

In addition, FINRA is amending Rule 6540 (Requirements Applicable to Market Makers) to delete footnote #1. Footnote #1 sets forth a summary of exemptive relief granted by the SEC from the requirements of SEA Rule 15c2–11 (subject to certain conditions). However, given that the SEC has since granted additional exemptive requests from the requirements of SEA Rule 15c2–11 that are not included in footnote #1 (and may continue to grant further requests in the future), FINRA is proposing to delete footnote #1 in its entirety and specify in Rule 6540 that members must demonstrate compliance with (or qualify for an exception or exemption from) SEC Rule 15c2–11.[7]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no

[3] SEA Rule 15c2–11 defines ''quotation'' as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

[4] ''Quotation medium'' means any ''inter-dealer quotation system'' or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. ''Inter-dealer quotation system'' means any system of general circulation to brokers or dealers that regularly disseminates the quotations of identified brokers or dealers.

[5] In cases where a member is displaying a quote representing an unsolicited customer order or IOI that was received electronically, it is understood that there may not be a ''person'' associated with the receipt or submission of such unsolicited customer order or IOI. Thus, with respect to the requirement that members record (1) the identity of the associated person who received the unsolicited customer order or IOI; or (2) the identity of the person from whom information regarding the unsolicited customer order or IOI was received where the order or IOI is received from another broker-dealer, members are only required to record such information if applicable.

[6] It is critical that the member receiving an order be advised of and understand the terms of the order that are relevant to the exception so that the receiving member may reasonably and accurately rely on the unsolicited customer order exception. For example, if the customer order is a ''day'' order, the receiving member must be advised of that fact so that it can withdraw the quote upon the expiration of the order. Similarly, to the extent that the terms of the order change or other significant information is received by the firm routing the order (e.g., a ''good-till-cancelled'' order is cancelled or there is a change in the terms of the order), the firm routing such order must promptly update the member displaying the quote as to the change in the terms of the order. To the extent the firm routing the order is not a member, the member should make periodic inquiry as to whether the terms of the order have changed. Members may not rely on the unsolicited customer order exception where a displayed quote no longer accurately represents current unsolicited customer interest.

[7] SEA Rule 15c2–11(h) sets forth the SEC's exemptive authority with respect to the requirements of SEA Rule 15c2–11 and provides that SEA Rule 15c2–11 shall not prohibit any publication or submission of any quotation if the SEC, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of the rule.

later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. *Statutory Basis*

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote more uniform recordkeeping and compliance with SEA Rule 15c2–11's unsolicited customer order exception.

*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.

**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–2009–030 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–2009–030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–030 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14147 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60086; File No. SR–FINRA–2009–023]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 2320 in the Consolidated FINRA Rulebook

June 10, 2009.

**I. Introduction**

On March 31, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 2820 as FINRA Rule 2320 in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook) [3] with minor changes. The proposal was published in the **Federal Register** on April 21, 2009.[4] The Commission received one comment letter on the proposal.[5] On June 1, 2009, FINRA responded to the comment letter.[6] This order approves the proposed rule change.

**II. Description of the Proposal**

NASD Rule 2820 prohibits members from participating in the offer or sale of variable life insurance and variable annuity contracts unless certain conditions are met (collectively, ''variable contract''). Specifically, members: (i) May not participate in the offering or sale of a variable contract on any basis other than at a value to be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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).

[4] *See* Securities Exchange Act Release No. 59762 (April 14, 2009), 74 FR 18269 (''Notice'').

[5] *See* letter from Clifford E. Kirsch and Eric A. Arnold for the Committee of Annuity Insurers, Sutherland Asbill & Brennan LLP, to Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2009 (''CAI Comment Letter'').

[6] *See* letter from Stan Macel, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated June 1, 2009.

determined following receipt of payment in accordance with the provisions of the contract, the prospectus and the Investment Company Act; (ii) must promptly transmit to the issuing insurance company all contract applications and at least the portion of the purchase payment required to be credited to the contract; and (iii) requires selling agreements between principal underwriters of variable contracts and selling broker-dealers that provide that the sales commission will be returned to the issuer if the contract is rendered for redemption within seven business days after acceptance. Additionally, under NASD Rule 2820, members may not sell variable contracts unless the insurance company promptly honors customer redemption requests in accordance with the contract, its prospectus and the Investment Company Act.

Furthermore, NASD Rule 2820(g) prohibits associated persons of a member from accepting any compensation from any person other than the member with which the person is associated, in connection with the sale and distribution of variable contracts. However, there is an exception permitting arrangements where a non-member pays compensation directly to associated person, provided that the member agrees to the arrangement, and relies on appropriate rules or guidance from the Commission that apply to the specific fact situation of the arrangement, and the relevant associated persons treat the funds as compensation. Additionally, it prohibits associated person from accepting securities as compensation, limits the payment or receipt of non-cash compensation (such as gifts, entertainment, training or education meetings and sales contests), and requires that certain records be kept. Currently, this provision requires a member to keep a record of all compensation received by the member or its associated persons from ''offerors,'' other than small gifts and entertainment permitted by the rule, and include the nature of, and ''if known,'' the value of any non-cash compensation received.

The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320 in the Consolidated FINRA Rulebook and eliminate the phrase ''if known'' regarding the value of non-cash compensation. The deletion would require members to estimate the actual value of non-cash compensation for which a receipt (or similar documentation) assigning a value is not available and would be more consistent with the non-cash compensation recordkeeping requirements regarding public offerings of securities (FINRA Rule 5110(i)(2)) and direct participation programs (NASD Rule 2810(c)(2)).[7] As stated in the Notice, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice.*

## III. Summary of Comments and FINRA's Response

As previously noted, the Commission received one comment letter on the proposed rule change.[8] While expressing general approval of the proposed rule change, the commenter expressed concern and sought clarification about the proposed change regarding the rule's non-cash compensation provision. The commenter requested that FINRA confirm that it would respect a member's reasonable estimate of the value of non-cash compensation. Specifically, the commenter asserted that, because the proposed ''estimation'' standard would be inherently imprecise, it would undoubtedly result in members valuing similar forms of non-cash compensation differently. As such, the commenter requested that a member's estimate of value be respected, unless it is patently unreasonable.

In response, FINRA stated that members would be required to use good faith when estimating the value of non-cash compensation if a receipt or similar documentation is not available. FINRA acknowledged that, while there could be some differences regarding firms' estimates, FINRA believes that a good faith standard should help ensure that such differences are not significant, or can be distinguished based on underlying facts and circumstances. In addition, as stated in the Notice, the change would be consistent with the recordkeeping requirements for non-cash compensation received in connection with public offerings of securities[9] and the offer or sale of direct participation programs.[10]

The commenter also requested no less than 180 days to implement the proposed rule change. It noted that members would need this amount of time to adopt new policies and procedures, modify or create computerized and/or other compensation tracking systems, notify and educate their registered representatives, and adjust their training programs to ensure compliance with the new requirements.

In response, FINRA stated that its general protocol is to announce the effective dates for new FINRA rules in *Regulatory Notices* that are published every other month. Each *Regulatory Notice* announces the effective dates of the new FINRA rules approved by the Commission during the preceding two months. The new FINRA rules' effective dates generally are sixty days following publication of the relevant *Regulatory Notice.* Accordingly, FINRA would announce the effective date of the approved rule change, FINRA Rule 2320, in a *Regulatory Notice* to be published on or about August 17, 2009, which would establish an effective date for the rule on or about October 19, 2009. FINRA believes that an implementation period consistent with this general protocol would be adequate to implement the proposal, considering that the changes proposed are minor.

## IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rule and regulations thereunder that are applicable to a national securities association,[11] and in particular, with Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules 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's adoption of NASD 2820 with minor changes as FINRA Rule 2320 in the Consolidated FINRA Rulebook will continue the regulation of members in connection with the sale and distribution of variable contracts. Requiring members to assign a value for non-cash compensation based on a good faith estimate should make members' records more complete. The Commission also notes that a good faith standard should encourage reasonable estimates of the value of non-cash compensation. The Commission believes FINRA responded appropriately to the issues raised by the commenter.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[13] that the

[7] FINRA has proposed to transfer NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. *See* SR–FINRA–2009–016.

[8] *See* CAI Comment Letter, *supra* note 5.

[9] *See* FINRA Rule 5110(i)(2).

[10] *See* NASD Rule 2810(c)(2). *See also* note 7.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–FINRA–2009–023) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14148 Filed 6–16–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60084; File No. SR–Phlx-2009–37]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Approval of Proposed Rule Change Relating to Quoting Requirements for Streaming Quote Traders, Remote Streaming Quote Traders and Specialists

June 10, 2009.

On April 21, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the quoting requirements for Streaming Quote Traders (''SQTs''), Remote Streaming Quote Traders (''RSQTs''), and specialists. The proposed rule change was published for comment in the **Federal Register** on May 6, 2009.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange proposes to replace its continuous quoting requirement for SQTs, RSQTs, and specialists with a reference to the portion of the trading day when a quote must be available. Specifically, a market participant that is currently subject to continuous quoting obligations would, instead, be required to maintain a two-sided quote in a series for a total time equal to at least 90% (or higher, if so announced by the Exchange in advance) of the duration of the trading day. If a technical failure or limitation of a system of the Exchange prevents a participant from maintaining, or prevents a participant from communicating to the Exchange, timely and accurate quotes, the duration of such failure or limitation would not be included in any of the calculations with respect to the affected quotes. The Exchange would have the ability to consider other exceptions to the quoting requirements based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange also proposes to modify the requirement applicable to Directed SQTs (''DSQTs''), Directed RSQTs (''DRSQTs''), and specialists to quote 99% of their assigned series. Specifically, the Exchange proposes to replace the 99% requirement in all of these instances with the lesser of two alternatives: 99% of the series, or 100% minus a single call-and-put ''pair.'' The eligible pair in this case would consist of two individual options, one call and one put, which cover the same underlying instrument and have the same expiration date and exercise price.

The Commission notes that the Exchange's proposal would make minor adjustments to the quoting requirements of SQTs, RSQTs, DSQTs, DRSQTs, and specialists. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] in that it is 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. In addition, the Commission notes that it has approved similar quoting requirements applicable to market makers on other options exchanges.[6]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2009–37) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14169 Filed 6–16–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59842 (April 29, 2009), 74 FR 21037.

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See, e.g.,* Securities Exchange Act Release Nos. 57109 (January 7, 2008), 73 FR 2295 (January 14, 2008) (SR–CBOE–2007–134); and 57186 (January 22, 2008), 73 FR 4931 (January 28, 2008) (SR–NYSEArca-2007–121).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60096; File No. SR–DTC–2009–10]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the Web Inquiry Notification System

June 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 22, 2009, The Depository Trust Company (''DTC'') 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 DTC. DTC 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 replace DTC' Participant Inquiry Notification System (''PINS'') with a new Web Inquiry Notification System (''WINS'') as a means for participants and DTC to communicate with each other about records pertaining to various services such as dividends, corporate reorganizations, custody services, and securities processing.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)4).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change establishes WINS, which is a new internet browser-based inquiry management system. WINS will replace PINS as the function that enables DTC participants to submit inquiries regarding their records. WINS will offer many significant improvements over PINS, including streamlining the process for participants to submit and to monitor inquiries and requests, providing easier navigation and date entry,[4] and having a quicker response time. Additionally, WINS will provide real-time status updates by e-mail. Participants will receive e-mails stating that their inquiry was received, updated, or closed.

Participants will have the ability to access WINS through the Participant Browser System (''PBS''). If a Participant does not have access to PBS, then it will access WINS through DTC's public Web site. Existing PINS users will be given access to WINS automatically and will be able to use their current password. All participant inquiries made before the release of WINS will continue to be processed through PINS. Participants will be able to view those inquiries through the PINS function but will be required to submit all new inquiries through WINS.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act,[5] the rules and regulations thereunder. DTC states that the proposed rule change enhances an existing function to provide DTC participants with greater transparency and quicker responses to their inquiries. As such, it is a change to an existing function that will not adversely affect the safeguarding of securities and funds in DTC's control or custody.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC 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*

DTC has not solicited or received written comments relating to the proposed rule change. DTC 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 changes have become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of DTC or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes 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 changes are 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–DTC–2009–10 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. DTC–2009–10. 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 Section, 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 filings also will be available for inspection and copying at DTC's principal office and DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* 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. DTC–2009–10 and should be submitted on or before July 8, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14191 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[4] There will be a guided drop-down menu for each inquiry type, eliminating the need for participants to determine department and activity codes.

[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).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60087; File No. SR–ISE–2009–33]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

June 10, 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 June 5, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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*

(a) *Purpose*—In SR–ISE–2009–26, the Exchange adopted the term 'Singly Listed ETFs' to identify those ETF products that are listed only on ISE and for which the Exchange charges a fee of $0.18 per contract for customer transactions. Currently, there are only two ETFs that are singly listed on the Exchange, the First Trust ISE Water ETF and the First Trust ISE–Revere Natural Gas ETF, identified on the Exchange's fee schedule by their ticker symbols, FIW and FCG, respectively. FCG was recently listed for trading on another exchange and is therefore no longer singly listed on ISE. As FCG is now a multiply-listed ETF option, ISE will no longer charge a transaction fee for customer orders in this product and the Exchange proposes to remove FCG from its fee schedule. Since options on FCG are now multiply-listed, the Exchange has determined to charge a Payment for Order Flow (''PFOF'') fee for this product.

Further, ISE first listed options on the First Trust ISE ChIndia ETF (''FNI'') on July 24, 2007.[3] At that time, FNI was singly listed on the ISE and thus, ISE did not charge a PFOF fee for transactions in this product. FNI remained singly listed until January 9, 2008 when another exchange began listing options on it. Despite it being multiply-listed, ISE did not charge a PFOF fee for transactions in FNI. ISE now proposes to charge a PFOF fee for transactions in FNI.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] 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.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–33 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–2009–33. 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 ISE. 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–2009–33 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14170 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[3] *See* Securities Exchange Act Release No. 56165 (July 30, 2007), 72 FR 43307 (August 3, 2007).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A). [sic]

[7] 17 CFR 19b–4(f)(2). [sic]

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60088; File No. SR–NYSE–2009–56]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee for Use of a Hand Held Device Configured To Provide Only Opening and Closing Order Imbalance Data

June 10, 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 June 5, 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 adopt a $250 monthly fee for use of an NYSE e-Broker® Hand Held Device that is configured to provide access only to opening and closing order imbalance data. 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 the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The e-Broker® Hand Held Device (''Hand Held''), which is proprietary to the Exchange, provides Exchange floor brokers with messaging capability, the ability to receive orders electronically while on the floor of the Exchange, and access to market data. The Exchange charges an annual fee of $5,000 per Hand Held. The Exchange now proposes to make available a reconfigured Hand Held that provides access to opening and closing order imbalance data, but without any of the other market data or other capabilities normally provided by Hand Helds. With effect from July 1, 2009, the Exchange proposes to charge a monthly fee of $250.00 for each Hand Held that is configured to provide only opening and closing order imbalance data. Opening and closing order imbalance data is currently available on the trading floor only to floor brokers with access to the full service Hand Held. By making the reconfigured Hand Held available, the Exchange is enabling non-broker employees of member organizations, such as floor clerks, to have access to this information while working on the trading floor.[3] Floor clerks interact with customers on behalf of their Member Organization employers. Part of the service floor clerks provide to those customers is to act as a source of current information about market developments. Consequently, floor clerks need to have access to all relevant information about market activity, including opening and closing trade imbalances. Currently, floor clerks can access opening and closing trade imbalance information either by speaking to a floor trader who has a full-service Hand Held or by accessing Bloomberg, which requires the firm to maintain a costly subscription. The proposed reconfigured Hand Held will create efficiencies as floor brokers will no longer have to devote time to communicating trade imbalance data to floor clerks. It will also provide a low cost alternative to the expense of subscribing to Bloomberg for the sole purpose of accessing opening and closing trade imbalance data.

[3] While it is believed that Bloomberg is the only market data vendor that currently provides its customers with opening and closing order imbalances data, the Exchange provides this information feed to all market data vendors for their distribution to subscribers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[4] of the Securities Exchange Act of 1934 (the ''Act'')[5] in general and Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all Member Organizations will be able to avail of the Hand Held service on the same terms.

*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*

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[7] and Rule 19b–4(f)(2) thereunder.[8]

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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–56 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–2009–56. 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–2009–56 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14171 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60093; File No. SR–CBOE–2009–036]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 4, 2009, Chicago Board Options Exchange, Incorporated 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 CBOE. 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The Exchange charges an Options Regulatory Fee (''ORF'') of $.006 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, excluding Options Intermarket Linkage Plan (''Linkage'') orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.[2]

The Exchange has reevaluated the current amount of the ORF in light of better than expected trading volume so far in 2009. The Exchange stated in the Original Filing that the ORF is set at a rate that the Exchange anticipates will approximately replace the amount of revenue that would be lost from the elimination of RR Fees.[3] The Exchange has determined that the ORF would generate revenue in excess of the amount of annual revenue the Exchange used to receive from RR fees if the ORF remained at $.006 per contract for all of 2009. Accordingly, the Exchange proposes to reduce the ORF from $.006 per contract to $.004 per contract. The fee change would become operative on August 1, 2009, in order to give members time to implement the revised fee.

The Exchange will continue to monitor the amount of revenue raised by the ORF to ensure that it is meeting its revenue benchmarks and may make other adjustments to the fee in the future as necessary. The Exchange anticipates providing notice of any ORF changes as far in advance of the effective date of the new rate as possible.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[4] in general, and furthers

[1] 15 U.S.C. 78s(b)(1).

[2] The ORF was established in October 2008 as a replacement of Registered Representative (''RR'') fees. *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (''Original Filing''). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. *See* Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from $.0045 per contract to $.006 per contract. *See* Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009).

[3] Original Filing at 63745.

[4] 15 U.S.C. 78f(b).

the objectives of Section 6(b)(4)[5] of the Act 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 the revised ORF is reasonable because it is expected to approximately equal the annual revenue the Exchange used to receive from RR Fees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. 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 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–CBOE–2009–036 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-CBOE–2009–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE–2009–036 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14172 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60094; File No. SR–NASDAQ–2009–049]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NASDAQ Listing Rules To Reflect Changes to the Rules of the Commission

June 10, 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 May 20, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. 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 a rule change to modify Nasdaq's Listing Rules to reflect recent changes to Commission rules. The text of the proposed rule change is available from Nasdaq's Web site 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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to conform its rules to reflect two recent changes to the rules of the Commission. On September 23, 2008, the Commission adopted changes to Form 20–F[3] that, beginning with the report filed for the first fiscal year ended on or after December 15, 2008, requires companies that file an annual report on Form 20–F to discuss significant differences in their corporate governance practices compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards.[4] In contrast, Nasdaq Rule 5615(a)(3) allows foreign private issuers to disclose their non-conforming corporate governance practices in their annual reports or registration statements filed with the Commission or on their Web sites. As a consequence, Nasdaq's requirements regarding annual report

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 249.220f.

[4] Securities Exchange Act Release No. 58620 (September 23, 2008), 73 FR 58300 (October 6, 2008). This disclosure is required in Item 16G of the Form 20–F.

disclosure by foreign private issuers who file Form 20–F are inconsistent with those of the Commission. Accordingly, Nasdaq is proposing to eliminate from Rule 5615(a)(3) and IM–5615–3 the option available to foreign private issuers that file a Form 20–F to disclose non-conforming corporate practices solely on their Web sites.[5] These changes will ensure that Nasdaq's rules are consistent with the Commission's requirements, and will remove a potential trap for the unwary presented by complying with a more permissive self-regulatory organization rule and unknowingly failing to satisfy the rules of the Commission.[6] Nasdaq also proposes to reorganize Rule 5615(a)(3) to simplify its structure.

In a similar regard, Nasdaq is proposing changes to account for the Commission's amendments to the disclosure and reporting requirements designed to simplify and provide regulatory relief to smaller companies (the ''Smaller Reporting Company Amendments'').[7] The Smaller Reporting Company Amendments, which became fully effective March 15, 2009, replaced Item 401(e) of Regulation S–B [8] and Item 401(h) of Regulation S–K,[9] which previously defined an ''audit committee financial expert'' with new Items 407(d)(5)(ii) and (iii) of Regulation S–K.[10] Nasdaq proposes to update references in IM–5605–4 relating to the definition of an audit committee financial expert by deleting citations to old Item 401(e) of Regulation S–B and old Item 401(h) of Regulation S–K, and replacing them with citations to new Items 407(d)(5)(ii) and (iii) of Regulation S–K, which now define audit committee financial expert.

The Smaller Reporting Company Amendments also eliminated the term ''small business issuer'' [11] and integrated Item 404 of Regulation S–B,[12] which previously set forth the requirements for a small business issuer to disclose transactions with related persons, into Item 404 of Regulation S–K.[13] Under revised Item 404 of Regulation S–K, the new term ''smaller reporting company'' [14] replaced the term small business issuer formerly found in Item 404 of Regulation S–B. Currently, Nasdaq Rule 5630, which relates to the review and oversight of related party transactions, references both Item 404 of Regulation S–B and Item 404 of Regulation S–K. As such, Nasdaq is proposing to eliminate reference to Item 404 of Regulation S–B and the term ''small business issuer'' from Rule 5630.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, because it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is designed to facilitate companies' compliance with the rules of the Commission by aligning Nasdaq's disclosure requirements with the newly-adopted and more proscriptive rules of the Commission and to update references to deleted Commission rules. Nasdaq notes that the proposed changes to Rule 5615(a)(3) and IM 5615–3 will not eliminate or reduce information now available to investors, but rather will consolidate the location of such information and may increase the availability of such information to the extent foreign private issuers determine to continue to disclose the non-conforming practices on their Web sites in addition to the required Form 20–F disclosure. Nasdaq also believes that the proposed changes will assist foreign private issuers in avoiding a trap for the unwary presented by complying with a more permissive self-regulatory organization rule and unknowingly failing to satisfy the rules of the Commission. Similarly, Nasdaq believes that the elimination of references to Regulation S–B and amendments to rule citations to Regulation S–K found in IM–5605–4 and Rule 5630 will serve to avoid confusion with respect to disclosure requirements and definitions applicable to certain Nasdaq companies.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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, as amended.

*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) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally does not become operative prior to thirty days after the date of the filing.[19] However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the filing corrects inaccuracies in Nasdaq's rules and conforms Nasdaq rules that are currently inconsistent with those of the Commission. The Commission believes that the proposed

[5] Companies will continue to be encouraged to make such disclosures on their Web sites, in addition to providing the disclosures in their Forms 20–F, so that the non-conforming practices will be as readily transparent to investors and potential investors as possible.

[6] Nasdaq notes that the Commission's rules do not apply to a foreign private issuer that files reports on a form other than Form 20–F, such as Form 40–F, 17 CFR 249.240f. Such companies will continue to be allowed to make the required disclosure solely on their Web site.

[7] Securities Exchange Act Release No. 56994 (December 19, 2007), 73 FR 934 (January 4, 2008). These amendments, among other things, integrated the Regulation S–B scaled disclosure requirements into Regulation S–K, and eliminated Forms 10–QSB and 10–KSB, effective October 31, 2008 and March 15, 2009, respectively.

[8] Formerly, 17 CFR 228.401(e).

[9] Formerly, 17 CFR 229.401(h).

[10] 17 CFR 229.407(d)(5)(ii) and (iii).

[11] Formerly, 17 CFR 228.10.

[12] Formerly, 17 CFR 228.404.

[13] 17 CFR 229.404.

[14] The new term ''smaller reporting company'' is defined by Item 10(f)(1). *See* 17 CFR 229.10(f)(1).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, Nasdaq is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has complied with this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

changes will help certain companies avoid violating the Commission's disclosure rules as they prepare their annual reports, by conforming Nasdaq's disclosure requirements with those of the Commission. In addition, the proposed changes will correct inaccurate rule citations to the rules and regulations of the Commission, thereby reducing confusion. Thus, the Commission designates the proposal to become operative upon filing.[21]

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–2009–049 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–2009–049. 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 available publicly. All submissions should refer to File No. SR–NASDAQ–2009–049 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–14173 Filed 6–16–09; 8:45 am]

**BILLING CODE 8010–01–P**

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

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## DEPARTMENT OF STATE

**[Public Notice: 6670]**

## 60-Day Notice of Proposed Information Collection: DS–4024, DS–4024e, American Citizens Services Internet Based Registration Service (IBRS), OMB number 1405–0152

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* American Citizens Services Internet Based Registration Service (IBRS).
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–4024, DS–4024e.
- *Respondents:* United States Citizens and Nationals.
- *Estimated Number of Respondents:* 676,946.
- *Estimated Number of Responses:* 676,946.
- *Average Hours per Response:* 20 minutes.
- *Total Estimated Burden:* 225,648 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

**DATES:** The Department will accept comments from the public up to 60 days from June 17, 2009.

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

- *E-mail: ASKPRI@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or *ASKPRI@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

### Abstract of Proposed Collection

The American Citizens Services Internet Based Registration Service (IBRS) makes it possible for U.S. nationals to register on-line from anywhere in the world. In the event of a family emergency, natural disaster or international crisis, U.S. embassies and consulates rely on this registration information to provide critical information and assistance to them.

### Methodology

99% of responses are received via electronic submission on the Internet. The service is available on the

Department of State, Bureau of Consular Affairs Web site *http://travel.state.gov* at *https://travelregistration.state.gov/ibrs/*. The paper version of the collection permits respondents who do not have Internet access to provide the information to the U.S. embassy or consulate by fax, mail or in person.

Dated: May 20, 2009.

**Mary Ellen Hickey,**

*Managing Director, Bureau of Consular Affairs, Department of State.*

[FR Doc. E9–14223 Filed 6–16–09; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 6671]**

### 60-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application Form, OMB 1405–XXXX, DS–7651

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Administration (A/OPR/LS).
- *Form Number:* DS–7651.
- *Respondents:* General Public Applying for Translator and/or Interpreter Contract Positions.
- *Estimated Number of Respondents:* 900.
- *Estimated Number of Responses:* 900.
- *Average Hours per Response:* Thirty minutes.
- *Total Estimated Burden:* 450 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATE(S):** The Department will accept comments from the public up to 60 days from June 17, 2009.

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

- *E-mail: LSapplications@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Department of State, Office of Language Services SA–1, Fourteenth Floor, 2401 E Street, NW., Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Ms. Keiry Carroll at 2401 E Street, NW., Fourteenth Floor, Washington, DC 20522, who may be reached on (202) 261–8777 or at *carrollkm@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:*

The information collected is needed to ascertain whether respondents are viable interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the general public with varying degrees of experience in the fields of interpreting and/or translating.

*Methodology:*

OLS makes the ''Office of Language Services Contractor Application Form'' available via the OLS Internet site. Respondents can submit it electronically via e-mail or fax.

Dated: April 6, 2009.

**Matthew S. Klimow,**

*Director, Office of Language Services, Department of State.*

[FR Doc. E9–14225 Filed 6–16–09; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF STATE

**[Public Notice 6672]**

### United States Global Change Research Program

**ACTION:** Call for U.S. Nominations to serve as Authors and/or Review Editors of the IPCC Special Report ''Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation'' June 17, 2009.

**SUMMARY:** The United States participates in the Intergovernmental Panel on Climate Change, an intergovernmental body that oversees the development of assessments of the state of knowledge on climate change. The role of the IPCC is to assess on a comprehensive, objective, open and transparent basis, the scientific, technical, and socioeconomic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts, and options for adaptation and mitigation.

IPCC assessments are commissioned by member governments and produced by scientists and technical experts. The reports undergo expert and government review and are accepted by IPCC member governments prior to their release. Information on the IPCC and its assessments and procedures can be found at *http://www.ipcc.ch.*

Every six to seven years, the IPCC produces a comprehensive three-volume assessment of the state of knowledge of climate change. Volumes in this comprehensive assessment cover climate change science; impacts, vulnerability and adaptation; and mitigation. The most recent of these was finalized in 2008; the next comprehensive assessment will be finalized in 2014.

In addition to this comprehensive assessment, the IPCC periodically produces ''special reports'' that address specific topics on climate change. At the IPCC's most recent plenary meeting on April 21–23, governments approved the production of a ''Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation.''

Under IPCC procedures, member governments have an opportunity to provide nominations for authors to be involved in the production of each chapter in the report. The United States provides this call for nominations for U.S. authors or reviewers for the subject report. The subject report will require the contributions of experts who can integrate the findings of the climate change science; vulnerability, impacts, and adaptation to extreme events; and

disaster risk management communities. Nominees should have extensive expertise pertinent to the subject matter covered, and will generally be recognized in their field of expertise. For each chapter in a report, IPCC procedures call for convening lead authors, who oversee the production of a chapter; lead authors, who are responsible for sections of a chapter, and contributing authors. IPCC procedures also call for lead reviewers, also generally are recognized in their field.

The chapters are as follows:

- Climate change: New dimensions in disaster risk, exposure, vulnerability, and resilience
- Determinants of risks: Exposure and vulnerability
- Changes in climate extremes and their impacts on the natural physical environment
- Changes in impacts of climate extremes: Human systems and ecosystems
- Managing the risks from climate extremes at the local level
- Managing the risks from climate extremes at the national level
- Managing the risks: International level and integration across scales
- Toward a sustainable and resilient future
- Case studies.

Further information on this request—such as the IPCC request for nominations, the approved outlines of the report, a description of the roles and responsibilities associated with them, and a nomination form and other required materials that must be completed for each nominee—may be found at either the IPCC Secretariat (*http://www.ipcc-wg2.gov/AR5/sr.html*) or USGCRP (*http://www.globalchange.gov/ipcc/extremes*) Web sites.

**DATES:** A completed nomination form as well as a summary CV for each nominee should be returned to the U.S. Global Change Research Program Office (*ipcc_nominations@usgcrp.gov*) by close of business Friday, July 10, 2009. The summary CV—in English and preferably no more than 5 pages, highlighting topical expertise and relevant publications—must include a statement of primary expertise (e.g., climate science, disaster risk reduction, impacts of extreme events/disasters, adaptation, economics).

**FOR FURTHER INFORMATION CONTACT:** David Allen, U.S. Global Change Research Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006. (Phone: 202–419–3486, Fax: 202–223–3065, E-mail: *dallen@usgcrp.gov*); or visit the USGCRP Web site at *http://www.globalchange.gov.*

Dated: June 12, 2009.

**Drew Nelson,**

*Acting Office Director, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.*

[FR Doc. E9–14230 Filed 6–16–09; 8:45 am]

**BILLING CODE 4710–09–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS382]**

## WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that on May 22, 2009, Brazil requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning the antidumping duty investigation on certain orange juice from Brazil, the second antidumping duty administrative review on certain orange juice from Brazil (Department of Commerce Case No. A–351–840), and the ''continued use of the US zeroing procedures ('model' or 'simple' zeroing) in successive antidumping proceedings.'' On November 27, 2008, Brazil requested consultations with the United States concerning the first antidumping administrative review on certain orange juice from Brazil and various U.S. laws, regulations, administrative procedures, practices, and methodologies. Those requests may be found at *www.wto.org* contained in documents designated as WT/DS382/1/Add.1 and WT/DS382/1, respectively. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 17, 2009 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted electronically to *www.regulations.gov*, docket number USTR–2008–0044. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Leigh Bacon, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5859.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

On November 27, 2008, Brazil requested consultations regarding the antidumping duty administrative review on certain orange juice from Brazil, referring in particular to the use of ''zeroing'' in that review. USTR solicited comments in response to Brazil's November 27, 2008, consultations request in 73 **Federal Register** 80,442 (Dec. 31, 2008). Comments received in response to that request may be viewed on the *www.regulations.gov* Web site by entering docket number USTR–2008–0044 in the search field on the home page.

### Major Issues Raised by Brazil

In its second consultations request, filed on May 22, 2009, Brazil requested consultations regarding the antidumping duty investigation in *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Administrative Review* (A–351–840), covering the period from October 1, 2003, to September 30, 2004, and the final results thereof, 71 FR 2183 (January 13, 2006), the antidumping duty order, 71 FR 12183 (Mar. 9, 2006), and any cash deposits issued pursuant thereto; and the antidumping duty administrative review covering the period from March 1, 2007, to February 29, 2008. Brazil also challenges the ''continued use'' of ''zeroing'' procedures in successive antidumping proceedings in that case.

Brazil alleges inconsistencies with Articles II, VI:1, and VI:2 of the *General Agreement on Tariffs and Trade 1994,*

Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2, and 18.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement); and Article XVI:4 of the WTO Agreement.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments electronically to *www.regulations.gov* docket number USTR–2008–0044. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov*, enter docket number USTR–2008–0044 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the website by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection. USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *www.regulations.gov* Web site by entering docket number USTR–2008–0044 in the search field on the home page.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E9–14256 Filed 6–16–09; 8:45 am]

BILLING CODE 3190–W9–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

**[Docket No. OST–2009–0115]**

### Notice of Funding Availability for Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure Under the American Recovery and Reinvestment Act

**AGENCY:** Office of the Secretary of Transportation (''OST'').

**ACTION:** Notice of Funding Availability.

**SUMMARY:** On May 18, 2009, the Department of Transportation published an interim notice announcing the availability of funding for TIGER Discretionary Grants (as defined below), project selection criteria, application requirements and the deadline for submitting applications. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. The Department considered the comments that were submitted in accordance with the interim notice and has decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described below in ''Supplemental Information.'' In the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

**DATES:** Complete applications for TIGER Discretionary Grants must be submitted by September 15, 2009 (the ''Application Deadline''). While applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline. Due to the need to expedite the grant award process to meet the requirements and purposes of the Recovery Act (as defined below), the Department will evaluate all applications and announce the projects that have been selected to receive Grant Funds (as defined below) as soon as possible after the Application Deadline, but no later than February 17, 2010. In addition, in the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

**ADDRESSES:** Applications must be submitted to the TIGER Discretionary

Grants program manager electronically via e-mail at *TIGERGrants@dot.gov.* Applicants should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only applications received via e-mail as provided above shall be deemed properly filed.

**FOR FURTHER INFORMATION:** For further information concerning this notice please contact the TIGER Discretionary Grants program manager via e-mail at *TIGERGrants@dot.gov*. A TDD is available for individuals who are deaf or hard of hearing at 202–366–7687.

**SUPPLEMENTARY INFORMATION:** On May 18, 2009, the Department published an interim notice announcing funding availability, project selection criteria, application requirements and the deadline for submitting applications. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. The Department considered the comments that were submitted in accordance with the interim notice and has decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described in the following paragraph. In the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

This notice revises the interim notice published on May 18, 2009, as follows:

1. The notice is no longer an interim notice, and the Department is no longer considering comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. This notice is the operative notice of funding availability for the TIGER Discretionary Grants program.

2. This notice provides additional guidance at the end of Section II(B)(1)(a) (*Long-Term Outcomes*) regarding the required evaluation of expected project costs and benefits. This notice (i) provides a discount rate for discounting future benefits and costs to present values, (ii) identifies guidance on the value of time and statistical lives, (iii) provides sources of information on the social benefits of reducing crash costs, pollutant emissions and other externalities, and (iv) provides economic values for various benefits, including the cost of a metric ton of carbon emissions. This notice also revises this section to clarify that the required evaluation of expected project costs and benefits for any applicant seeking a TIGER Discretionary Grant in excess of $100 million should present a robust assessment of a project's net benefits, in addition to the project's benefit-cost ratio.

3. This notice revises the definition of ''Eligible Applicants'' to clarify that Metropolitan Planning Organizations (MPOs) are Eligible Applicants, and requests in Section II(B)(1)(b)(iv) (*Job Creation & Economic Stimulus*) that MPOs provide evidence that the owner of the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant.

4. This notice includes a footnote in Section II(A)(1)(b) (*Job Creation & Economic Stimulus*) regarding the Department's application of the definition of ''Economically Distressed Areas'' from section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161) as a matter of policy. While ''Economically Distressed Areas'' are typically identified under the Act at the county level, for the purposes of this program the Department will consider municipalities or other similar political subdivisions of a State to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements for an ''Economically Distressed Area'' as defined in section 301 of the Public Works and Economic Development Act of 1965.

5. This notice includes a footnote in Section II(B)(1)(b)(iv) (*Job Creation & Economic Stimulus*) providing additional guidance about the requirements for a project's inclusion in State and local planning documents.

6. This notice revises Section III(B) (*Evaluation Process*) to clarify that the Department will consider whether a project has a negative effect on any of the selection criteria, and that any such effect may negatively impact the project's likelihood of being selected for a TIGER Discretionary Grant.

7. This notice revises Section II(B(1)(a)(ii) (*Economic Competitiveness*) to clarify that the Economic Competitiveness criterion is targeting investments that facilitate net new private sector expansion, hiring, or growth, rather than those that result only in moving existing jobs or economic activity to different locations.

8. This notice revises the Section entitled ''Dates'' to clarify that while applications may be submitted prior to the Application Deadline, the Department will not evaluate applications or announce projects selected to receive TIGER Discretionary Grants until after the Application Deadline.

9. This notice revises Section VII (*Contents of Application*) to (i) request that applicants include certain information on the first page of their applications, and (ii) clarify that recipients of TIGER Discretionary Grants and their first-tier sub-awardees are required to have a DUNS number (*http://www.dnb.com*) and a current registration in the Central Contractor Registration (*http://www.ccr.gov*) prior to award of a TIGER Discretionary Grant.

10. This notice revises Section III(A) (*Ensuring Responsible Spending of Recovery Act Funds*) to include requirements guiding the Department's communications with registered lobbyists which were promulgated by the memorandum from the President of the United States dated March 20, 2009.

11. This notice revises the Section entitled ''For Further Information'' to clarify that the TDD number is provided for individuals who are deaf or hard of hearing.

12. In Section II(C)(1) (*Program-Specific Criteria*), this notice corrects the citation to the Code of Federal Regulations from ''23 CFR 707'' to ''23 CFR 650.707.''

13. In the first cell of the last row of the table in Section III(B) (*Evaluation Process*), this notice replaces the words ''Project-Specific Criteria'' with the words ''Program-Specific Criteria.''

14. Section X (*Certifications*) was amended to delete Section 1201(a) and Section 1607 Certification requirements because submissions of such Certifications are not direct requirements for potential grantees under the TIGER Discretionary Grants program.

These substantive changes to the interim notice published on May 18, 2009, have been included in this notice. All comments received prior to the June 1, 2009, deadline were received and considered by the Department.

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## I. Background

On February 17, 2009, the President of the United States signed the American Recovery and Reinvestment

Act of 2009 (the ''Recovery Act'') to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. The Recovery Act appropriated $1.5 billion of discretionary grant funds to be awarded by the Department of Transportation for capital investments in surface transportation infrastructure. The Department is referring to these grants as ''Grants for Transportation Investment Generating Economic Recovery'' or ''TIGER Discretionary Grants.'' This notice requests that applications for TIGER Discretionary Grants be submitted by September 15, 2009, from State and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional applicants (''Eligible Applicants''). The funds provided by TIGER Discretionary Grants (''Grant Funds'') are available for obligation until September 30, 2011, and will be awarded on a competitive basis to projects that have a significant impact on the Nation, a metropolitan area, or a region.

Projects that are eligible for TIGER Discretionary Grants under the Recovery Act (''Eligible Projects'') include, but are not limited to: (1) Highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; (2) public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds.

The Recovery Act specifies that grants funded under the program may be no less than $20 million and no greater than $300 million. However, the Recovery Act gives the Department discretion to waive the $20 million minimum grant size for the purpose of funding significant projects in smaller cities, regions, or States (''Smaller Projects''). The term ''grant'' in this provision of the Recovery Act does not include TIGER TIFIA Payments.

Pursuant to the Recovery Act, no more than 20 percent of the funds made available under this program may be awarded to projects in a single State. The Department must take measures to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. TIGER Discretionary Grants may be used for up to 100 percent of project costs, but priority must be given to projects for which Federal funding is required to complete an overall financing package that includes non-Federal sources of funds. Priority must also be given to projects that can be completed by February 17, 2012.

The Recovery Act allows for up to $200 million of the $1.5 billion to be used to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') program, a Federal credit assistance program, if it would further the purposes of the TIGER Discretionary Grants program. The Department is referring to these payments as ''TIGER TIFIA Payments.'' The Department estimates that $200 million of TIGER TIFIA Payments could support approximately $2 billion in TIFIA credit assistance. Applicants for TIGER TIFIA Payments will be required to submit an application pursuant to this notice and a separate TIFIA loan application. Additional details are included below in Section VI (*TIGER TIFIA Payments*). Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER Discretionary Grants includes TIGER TIFIA Payments.

On March 20, 2009, the President of the United States signed a memorandum for the heads of executive departments and agencies on ensuring responsible spending of Recovery Act funds. The memorandum directs all Federal agencies responsible for administering Recovery Act funds, including the Department, to develop transparent, merit-based selection criteria to guide the commitment, obligation and expenditure of the Recovery Act funds for which they are responsible, including TIGER Discretionary Grant funds.

The memorandum directs the Department to award all Recovery Act funds, including TIGER Discretionary Grants, to projects with a demonstrated or potential ability to: ''(i) deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and (iv) satisfy the Recovery Act's transparency and accountability objectives.''

The memorandum also directs Department officials not to consider the views of a registered lobbyist concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing and made publicly available. For additional guidance on the lobbying disclosure requirements of the memorandum, please see the Office of Management and Budget's Interim Guidance Regarding Communications with Registered Lobbyists about Recovery Act Funds (available at *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-16.pdf*) and any subsequent guidance issued by OMB.

The purpose of this notice is to solicit applications from Eligible Applicants interested in receiving funds under this program.

## II. Selection Criteria and Guidance on Application of Selection Criteria

This section specifies the criteria that the Department will use to evaluate applications. The criteria incorporate the limited statutory eligibility requirements for this program, which are specified in this notice as relevant. This section is split into three parts. Section A (*Selection Criteria*) specifies the criteria that the Department will use to rate projects. Additional guidance about how the Department will apply these criteria, including illustrative metrics and examples, is provided in Section B (*Additional Guidance on Selection Criteria*). Section C (*Program-Specific Criteria*) explains how the Department is going to use certain program-specific criteria to help differentiate between similar projects (for example, multiple bridge replacement projects, or multiple New Starts projects). The program-specific criteria will not be rated as the selection criteria are rated, but rather will be used

to assign priority among similar projects during the evaluation and selection process. As stated below in Section VII(F) (*Contents of Application, Selection Criteria*), applicants should address both the selection criteria and the program-specific criteria in their applications.

*A. Selection Criteria*

TIGER Discretionary Grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria, ''Primary Selection Criteria'' and ''Secondary Selection Criteria.''

The Primary Selection Criteria include (1) Long-Term Outcomes and (2) Jobs Creation & Economic Stimulus. The Secondary Selection Criteria include (1) Innovation and (2) Partnership. The Primary Selection Criteria are intended to capture the primary objectives of the TIGER Discretionary Grants provision of the Recovery Act, which include near-term economic recovery and job creation, maximization of long-term economic benefits and impacts on the Nation, a region, or a metropolitan area, and assistance for those most affected by the current economic downturn. The Secondary Selection Criteria are intended to capture the benefits of new and/or innovative approaches to achieving programmatic objectives.

1. Primary Selection Criteria

(a) *Long-Term Outcomes.*

The Department will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that do not demonstrate a likelihood of significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

(i) *State of Good Repair:* Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.

(ii) *Economic Competitiveness:* Contributing to the economic competitiveness of the United States over the medium- to long-term.

(iii) *Livability:* Improving the quality of living and working environments and the experience for people in communities across the United States.

(iv) *Sustainability:* Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and benefitting the environment.

(v) *Safety:* Improving the safety of U.S. transportation facilities and systems.

(b) *Job Creation & Economic Stimulus.*

Consistent with the purposes of the Recovery Act, the Department will give priority to projects that are expected to quickly create and preserve jobs and stimulate rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) (''Economically Distressed Areas'').[1]

2. Secondary Selection Criteria

(a) *Innovation.*

The Department will give priority to projects that use innovative strategies to pursue the long-term outcomes outlined above.

(b) *Partnership.*

The Department will give priority to projects that demonstrate strong collaboration among a broad range of participants and/or integration of transportation with other public service efforts.

*B. Additional Guidance on Selection Criteria*

The following additional guidance explains how the Department will evaluate each of the selection criteria identified above in Section II(A) (*Selection Criteria*). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits specified below in Section VII(A) (*Length of Application*).

1. Primary Selection Criteria

(a) *Long-Term Outcomes.*

In order to measure a project's alignment with this criterion, the Department will assess the public benefits generated by the project, as measured by the extent to which a project produces one or more of the following outcomes.

(i) *State of Good Repair:* In order to determine whether the project will improve the condition of existing transportation facilities or systems, including whether life-cycle costs will be minimized, the Department will assess (i) whether the project is part of, or consistent with, relevant State, local or regional efforts to maintain transportation facilities or systems in a state of good repair, (ii) whether an important aim of the project is to rehabilitate, reconstruct or upgrade surface transportation projects that threaten future economic growth and stability due to their poor condition, (iii) whether the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure, and (iv) the extent to which a sustainable source of revenue is available for long-term operations and maintenance of the project. The application should include any quantifiable metrics of the facility or system's current condition and performance and, to the extent possible, projected condition and performance, with an explanation of how the project will improve the facility or system's condition, performance and/or long-term cost structure.

(ii) *Economic Competitiveness:* In order to determine whether a project promotes the economic competitiveness of the United States, the Department will assess whether the project will measurably contribute over the long-term to growth in employment, production or other high value economic activity. For purposes of aligning a project with this outcome, applicants should provide evidence of the long-term economic benefits that are provided by the completed project, not the near-term economic benefits of construction that are captured in the Jobs Creation & Economic Stimulus criterion. In weighing long-term employment benefits, the quality of jobs supported will be considered as well as number of jobs and whether these jobs are expected to provide employment in Economically Distressed Areas. Priority consideration will be given to projects that: (i) Improve long-term efficiency, reliability or cost-competitiveness in the movement of workers or goods, or (ii) make improvements that allow for net new investments in expansion, hiring, or other growth of private sector production at specific locations, particularly Economically Distressed Areas. Applicants may propose other methods of demonstrating a project's contribution to the economic competitiveness of the country and such methods will be reviewed on a case by case basis.

Economic competitiveness may be demonstrated by the project's ability to

[1] While Economically Distressed Areas are typically identified under the Act at the county level, for the purposes of this program the Department will consider municipalities or other similar political subdivisions of a State to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements of an Economically Distressed Area as defined in section 301 of the Public Works and Economic Development Act of 1965.

increase the efficiency and effectiveness of the transportation system through integration or better use of all existing transportation infrastructure (which may be evidenced by the project's involvement with or benefits to more than one mode and/or its compatibility with and preferably augmentation of the capacities of connecting modes and facilities), but only to the extent that these enhancements lead to the economic benefits that are identified in the preceding paragraph.

(iii) *Livability:* Livability investments are projects that not only deliver transportation benefits, but are also designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element of long-term outcomes delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact. In order to determine whether a project improves the quality of the living and working environment of a community, the Department will qualitatively assess whether the project:

(1) Will significantly enhance user mobility through the creation of more convenient transportation options for travelers;

(2) will improve existing transportation choices by enhancing points of modal connectivity or by reducing congestion on existing modal assets;

(3) will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or to make goods, commodities, and services more readily available to these groups; and/or

(4) is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process.

Livability improvements may include projects for new or improved biking and walking infrastructure. Particular attention will be paid to the degree to which such projects contribute significantly to broader traveler mobility through intermodal connections, or improved connections between residential and commercial areas.

(iv) *Sustainability:* In order to determine whether a project promotes a more environmentally sustainable transportation system, the Department will assess its ability to:

(1) Improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions; applicants are encouraged to provide quantitative information regarding expected reductions in emissions of $CO_2$ or fuel consumption as a result of the project, or expected use of clean or alternative sources of energy; projects that demonstrate a projected decrease in the movement of people or goods by less energy-efficient vehicles or systems will be given priority under this factor; and

(2) Maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity).

Applicants are encouraged to provide quantitative information that validates the existence of substantial transportation-related costs related to energy consumption and adverse environmental effects and evidence of the extent to which the project will reduce or mitigate those costs.

(v) *Safety.*

In order to determine whether the project improves safety, the Department will assess the project's ability to reduce the number, rate and consequences of surface transportation-related crashes, and injuries and fatalities among drivers and/or non-drivers in the United States or in the affected metropolitan area or region, and/or its contribution to the elimination of highway/rail grade crossings, the protection of pipelines, or the prevention of unintended release of hazardous materials.

*Evaluation of Expected Project Costs and Benefits:* The Department believes that benefit-cost analysis (''BCA''), including the monetization and discounting of costs and benefits to a common unit of measurement in present-day dollars, is an important discipline. For BCA to yield useful results, full consideration of costs and benefits is necessary. These include traditionally quantified fuel and travel time savings as well as greenhouse gas emissions, water quality impacts, public health effects, and other costs and benefits that are more remotely connected to vehicle-miles or are harder to measure. In addition, BCA should attempt to capture the dynamic effects of transportation investments on land use and household budgets. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments. The Department has a responsibility under Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

Therefore, applicants for TIGER Discretionary Grants are generally required to identify, quantify, and compare expected benefits and costs, subject to the following qualifications:

This requirement will be waived for applicants seeking waivers of the $20 million minimum grant size requirement for Smaller Projects.

Any applicant seeking a TIGER Discretionary Grant of more than $20 million but less than $100 million must include in its application estimates of the project's expected benefits in the five long-term outcomes identified in this Section II(A)(1)(a). The lack of a useful analysis of expected project benefits may be ground for denying award of a TIGER Discretionary Grant to any such applicant.

Any applicant seeking a TIGER Discretionary Grant in excess of $100 million must provide a well-developed analysis of expected benefits and costs, including a calculation of net benefits and a description of input data and methodological standards used for the analysis. The analysis should indicate the values that were assigned for qualitative measures, in addition to quantitative measures. Where information on costs and benefits, including consideration of externalities, is of sufficient quality and completeness to allow for a robust assessment of a project's net benefits and benefit-cost ratio, these analyses should be presented. Applicants should discount future benefits and costs to present values using a discount rate of 7 percent, following guidance provided by OMB in Circulars A–4 and A–94 (*http://www.whitehouse.gov/omb/circulars/*). Applicants may also provide an alternative analysis using a discount rate of 3 percent. Applicants should follow the Department's guidance on the values of time and statistical lives (*http://ostpxweb.dot.gov/policy/reports.htm*). Sources of information on the social benefits of reducing crash costs, pollutant emissions, and other externalities are discussed in Chapter VIII of the Final Regulatory Impact Analysis of the National Highway Traffic Safety Administration's rulemaking on Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (*http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.d0b5a45b55*

*bfbe582f57529cdba046a0/*). The economic values of various benefits are summarized in Table VIII–5 on page VIII–60.

The estimate of $33 per metric ton of carbon cited on page VIII–45 of NHTSA's analysis may be used as a placeholder to measure the global benefits of reducing U.S. $CO_2$ emissions. The Administration is currently developing interim guidance on the social cost of carbon that may result in a different determination of the appropriate assumption for per metric ton global benefits achieved by emissions reductions. Following this determination, the Department may adjust the level of economic benefits of anticipated emissions reductions for applications that cite such benefits. As such, applicants should clearly indicate how and to what degree calculations of benefits in their analyses are based on this assumed value of $CO_2$ emissions reduction.

The Department recognizes that some costs and benefits are more difficult to quantify or monetize than others. In presenting benefit-cost analyses, applicants may include qualitative discussion of the likely effects of better or more complete information on the net benefits presented and the reasons such information was not available for analysis. Where quality or completeness of data are not sufficient to allow a meaningful assessment of whether a project's net benefits are positive or negative, applicants should discuss the data limitations that lead to this conclusion and present a qualitative comparison of costs and benefits. Should the Department agree that quantitative measures of the values of significant costs and benefits are not available or not reliable, the Department will do its best to weight qualitative assessments of the costs and benefits provided by the applicant. However, in the event of an unreasonable absence of data and analysis or poor applicant effort to put forth a robust quantification of net benefits, the application is unlikely to receive further consideration. In general, the lack of a useful analysis comparing expected benefits and costs for any such project is ground for denying award of a TIGER Discretionary Grant.

In all cases, if it is clear to the Department that the total benefits of a project are not reasonably likely to outweigh the project's costs, the Department will not award a TIGER Discretionary Grant to the project. Consistent with the broader goals of the Recovery Act and the specific appropriation for the TIGER Discretionary Grants program, the Department can consider some factors that do not readily lend themselves to quantification or monetization, including distributional and geographic equity.

*Evaluation of Project Performance:* The Department also encourages applicants with the requisite wherewithal to provide a plan for evaluating the success of the project (or a program of projects) and measuring short- and long-term performance, specifically with respect to the economic recovery measures and long-term outcomes specified in this notice.

(b) *Job Creation & Economic Stimulus.* In order to measure a project's alignment with this criterion, the Department will assess whether the project promotes the short- or long-term creation or preservation of jobs and whether the project rapidly promotes new or expanded business opportunities during construction of the project or thereafter. Demonstration of a project's rapid economic impact is critical to a project's alignment with this criterion. Applicants are encouraged to provide information to assist the Department in making these assessments, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project during construction and thereafter. Applicants should also identify any business enterprises to be created or benefited by the project during its construction and once it becomes operational.

Consistent with the Recovery Act, the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued by the Office of Management and Budget (''OMB'') on April 3, 2009 (the ''OMB Guidance''), and Federal laws guaranteeing equal opportunity, applicants are encouraged to provide information to assist the Department in assessing (1) whether the project will promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and utilization of apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from the Recovery Act.

To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project's procurement plan is likely to create follow-on jobs and economic stimulus for manufacturers and suppliers that support the construction industry. A key consideration in assessing projects under this criterion will be how quickly jobs are created.

Consistent with Section 1602 of the Recovery Act (*Preference for Quick-Start Activities*), the Department will assess whether a project is ready to proceed rapidly upon receipt of a TIGER Discretionary Grant, as evidenced by:

(i) *Project Schedule:* A feasible and sufficiently detailed project schedule demonstrating that the project can begin construction quickly upon receipt of a TIGER Discretionary Grant and that the Grant Funds will be spent steadily and expeditiously once construction starts; the schedule should show how many direct, on-project jobs are expected to be created or sustained during each calendar quarter after the project is underway;

(ii) *Environmental Approvals:* Receipt (or reasonably anticipated receipt) of all environmental approvals necessary for the project to proceed to construction on the timeline specified in the project schedule, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act process;

(iii) *Legislative Approvals:* Receipt of all necessary legislative approvals (for example, legislative authority to charge user fees or set toll rates), and evidence of support from State and local officials, including relevant governor(s) and/or mayors. Evidence of support from all relevant State and local officials is not required, however, the evidence should demonstrate that the project is broadly supported;

(iv) *State and Local Planning:* The inclusion of the project in the relevant State, metropolitan, and local planning documents, or a certification from the appropriate agency that the project will

be included in the relevant planning document prior to award of a TIGER Discretionary Grant;[2] any MPO that is applying for a TIGER Discretionary Grant should provide evidence that the owner of the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant;

(v) *Technical Feasibility:* The technical feasibility of the project, including completion of substantial preliminary engineering work; and

(vi) *Financial Feasibility:* The viability and completeness of the project's financing package (assuming the availability of the requested TIGER Discretionary Grant funds), including evidence of stable and reliable financial commitments and contingency reserves, as appropriate, and evidence of the grant recipient's ability to manage grants.

The Department reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. Because projects have different schedules the Department will consider on a case-by-case basis how much time after award of a TIGER Discretionary Grant each project has before funds must be expended and construction started. This deadline will be specified for each TIGER Discretionary Grant in the project-specific grant agreements signed by the grant recipients and will be based on critical path items identified by applicants in response to items (i) through (vi) above. For example, if an applicant reasonably anticipates that National Environmental Policy Act requirements will be completed and final documentation received within 30 to 60 days of award of a TIGER Discretionary Grant, this timeframe will be taken into account in evaluating the application, but also in establishing a deadline for expenditure of funds and commencement of construction. The Department's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2011.

In compliance with the Recovery Act, the Department will give priority to projects that are expected to be completed on or before February 17, 2012. For purposes of this solicitation, ''completed'' means that all of the TIGER Discretionary Grant funds awarded to the project have been obligated and expended and construction of the project is substantially complete.

The ability of the grant recipient to complete the project by this date must be clearly demonstrated in the project schedule. The Department will give priority to projects that utilize innovative contracting approaches that encourage accelerated project delivery. The Department will consider projects that are not expected to be completed by February 17, 2012, but these projects will not be rated as highly under this criterion.

2. Secondary Selection Criteria

(a) *Innovation.*

In order to measure a project's alignment with this criterion, the Department will assess the extent to which the project uses innovative technology (including, for example, intelligent transportation systems, dynamic pricing, rail wayside or on-board energy recovery, smart cards, real-time dispatching, active traffic management, radio frequency identification (RFID), or others) to pursue one or more of the long-term outcomes outlined above and/or to significantly enhance the operational performance of the transportation system. The Department will also assess the extent to which the project incorporates innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance. The applicant should clearly demonstrate that the innovation is designed to pursue one or more of the long-term outcomes outlined above and/or significantly enhance the transportation system.

(b) *Partnership.*

(i) *Jurisdictional & Stakeholder Collaboration:* In order to measure a project's alignment with this criterion, the Department will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. The Department will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups. Pursuant to the OMB Guidance, the Department will give priority to projects that make effective use of community-based organizations in connecting disadvantaged people with economic opportunities.

In compliance with the Recovery Act, the Department will give priority to projects for which a TIGER Discretionary Grant will help to complete an overall financing package. An applicant should clearly demonstrate the extent to which the project cannot be readily and efficiently completed without Federal assistance, and the extent to which other sources of Federal assistance are or are not readily available for the project, including other funds made available pursuant to the Recovery Act. The Department will assess the amount of private debt and equity to be invested in the project or the amount of co-investment from State, local or other non-profit sources.

The Department will also assess the extent to which the project demonstrates collaboration among neighboring or regional jurisdictions to achieve National, regional or metropolitan benefits. Multiple States or jurisdictions may submit a joint application and should identify a lead State or jurisdiction as the primary point of contact. Where multiple States are submitting a joint application, the application should demonstrate how the project costs are apportioned between the States to assist the Department in making the distributional determinations described below in Section III(C) (*Distribution of Funds*).

(ii) *Disciplinary Integration:* In order to demonstrate the value of partnerships across government agencies that serve the various public service missions forwarded by the Recovery Act and to promote collaboration on the objectives outlined in this notice, the Department will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. For example, the Department will give

[2] All regionally significant projects requiring an action by the FHWA or the FTA must be in the metropolitan transportation plan, TIP and STIP. Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP and/or STIP it will not receive a TIGER Discretionary Grant until it is included in such plans. Projects that are not required to be in long range transportation plans, STIPs and TIPs will not need to be included in such plans in order to receive a TIGER Discretionary Grant. Freight and passenger rail projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. This is consistent with the exemption for high speed and intercity passenger rail projects under the Recovery Act. However, applicants seeking funding for freight and passenger rail projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals.

priority to transportation projects that create more livable communities and are supported by relevant public housing agencies, or transportation projects that encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions.

*C. Program-Specific Criteria*

The Department will use certain program-specific criteria in the evaluation and selection process to help differentiate between similar projects. Similar projects are those that have similar characteristics and satisfy the eligibility requirements of existing programmatic structures (for example, two urban light rail projects eligible to participate in the New Starts program). To the extent two or more similar projects have similar ratings based on the selection criteria outlined in Section II(A) (*Selection Criteria*) the program-specific criteria will be used to assign priority among these projects.

Projects will not be given specific ratings of ''highly recommended,'' ''recommended'' or ''not recommended'' for applicable program-specific criteria; rather, the Department will use the program-specific criteria to rank similar projects. To the extent otherwise similar projects can be differentiated based on the selection criteria, program-specific criteria will not be given any weight.

The program-specific criteria are not intended to limit the number of similar projects that can receive TIGER Discretionary Grants.

Program-specific criteria will only be applied to the types of projects identified below. Any other type of project will be differentiated from other similar projects solely based on the selection criteria outlined in Section II(A) (*Selection Criteria*). The Department will use the following program-specific criteria, where applicable, to assign priority among similar projects:

1. For bridge replacement projects, program-specific criteria are the following criteria found in 23 CFR 650.707: total daily truck and non-truck traffic, bridge sufficiency ratings, and bridges with load or geometric restrictions.

2. For transit projects, program-specific criteria are as follows: bus and rail fleet purchases that are within established FTA spare ratio policies, rehabilitation and replacement of assets that have exceeded the useful life span as identified in FTA policy, and/or the proposed project's rating under the New Starts and Small Starts program criteria, as applicable (a copy of the criteria used for this program is available at *http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html*).

3. For projects involving port infrastructure investments, program-specific criteria are, for both current state and post-project completion, the port or system's:

(a) Passenger and/or freight throughput, storage or processing capacity, including but not limited to, capacity movement (in tonnage, TEU (twenty-foot equivalent unit), barrels, *etc.*) across the dock, storage capacity on the terminal, and gate throughput;

(b) Demand for services or demand for capacity (in the case of post-project completion, projections or estimates);

(c) Efficiency (*e.g.* time savings, including vessel turnaround, gate and dwell times, and/or cost savings);

(d) Reliability and/or resiliency, including but not limited to, ability of the facility or system to recover from natural or man-made disasters and provide necessary services;

(e) National security or National interest aspects of items (a) through (d) above including but not limited to movement of Department of Defense assets and strategic location; and

(f) External factors that may influence or limit items (a) through (e) above (channel or berth maintenance or deepening and other navigation issues, road, rail or waterway factors that could represent bottlenecks and backups, *etc.*).

4. For TIGER TIFIA Payments, program-specific criteria are the eight statutory selection criteria used by the Department's TIFIA Joint Program Office to evaluate and select projects (these criteria have been assigned weights through regulation, as indicated below):

(a) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(b) The extent to which the project helps maintain or protect the environment (20 percent);

(c) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(d) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(e) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(f) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(g) The amount of budget authority required to fund the Federal credit instrument made available (5 percent); and

(h) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

In addition, approval for TIFIA credit assistance requires the receipt of a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating. Complete details regarding the TIFIA selection process can be found in the program guide, which can be downloaded from *http://tifia.fhwa.dot.gov/.*

## III. Evaluation and Selection Process

*A. Ensuring Responsible Spending of Recovery Act Funds*

On March 20, 2009, the President of the United States signed a memorandum for the heads of executive departments and agencies on ensuring responsible spending of Recovery Act funds. The memorandum directs all Federal agencies responsible for administering Recovery Act funds, including the Department, to develop transparent, merit-based selection criteria to guide the commitment, obligation and expenditure of the Recovery Act funds for which they are responsible, including TIGER Discretionary Grant funds.

In accordance with the memorandum, the criteria specified in this notice help ensure that TIGER Discretionary Grants will be awarded to projects with a demonstrated or potential ability to: ''(i) Deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and (iv) satisfy the Recovery Act's transparency and accountability objectives.''

In accordance with the memorandum, the Department will not award TIGER Discretionary Grants to any project that

is imprudent or does not further the job creation, economic recovery and other purposes of the Recovery Act. In addition, Department officials will not consider the views of a registered lobbyist concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing and made publicly available. For additional guidance on the lobbying disclosure requirements of the President's Memorandum, please see the Office of Management and Budget's Interim Guidance Regarding Communications with Registered Lobbyists about Recovery Act Funds (available at *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09–16.pdf*) and any subsequent guidance issued by OMB.

*B. Evaluation Process*

The Department will establish an evaluation team to review each application that is received by the Department prior to the Application Deadline. The evaluation team will be organized and led by the Office of the Secretary and will include members from each of the Cognizant Modal Administrations (as defined below). These representatives will include technical and professional staff with relevant experience and/or expertise. The evaluation team will be responsible for evaluating and rating all of the projects and making funding recommendations to the Secretary. The evaluation process will require team members to evaluate and rate applications individually before convening with other members to discuss ratings. The composition of the evaluation team will be finalized after the Application Deadline, based on the number and nature of applications received.

The Department will not assign specific numerical scores to projects based on the selection criteria outlined above in Section II(A) (*Selection Criteria*). Rather, ratings of ''highly recommended,'' ''recommended,'' or ''not recommended'' will be assigned to projects for each of the selection criteria. The Department will award TIGER Discretionary Grants to projects that are ''highly recommended'' in one or more of the selection criteria, with projects that are ''highly recommended'' in multiple selection criteria being more likely to receive TIGER Discretionary Grants. In addition, the Department will consider whether a project has a negative effect on any of the selection criteria, and any such negative effect may reduce the likelihood that the project will receive a TIGER Discretionary Grant. To the extent the initial evaluation process does not sufficiently differentiate among highly rated projects, the Department will use a similar three-tiered rating process to re-assess the projects that were highly rated and identify those that should be most highly rated.

The Department will give more weight to the two Primary Selection Criteria (*Long-Term Outcomes* and *Jobs Creation & Economic Stimulus*) than to the two Secondary Selection Criteria (*Innovation* and *Partnership*). Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in Section II(A)(1)(a) (*Long-Term Outcomes*) will not proceed in the evaluation process. A project need not be well aligned with each of the long-term outcomes in order to be successful in the long-term outcomes criterion overall. However, to be successful in the long-term outcomes criterion a project must be ''highly recommended'' for at least one of the long-term outcomes or ''recommended'' for multiple long-term outcomes. Projects that are strongly aligned with multiple long-term outcomes will be the most successful in this criterion.

For the Jobs Creation & Economic Stimulus criterion, projects need not receive a rating of ''highly recommended'' in order to be recommended for funding, although a project that is not ready to proceed quickly, as evidenced by the items requested in Section II(B)(1)(b)(i)–(vi) (*Project Schedule, Environmental Approvals, Legislative Approvals, State and Local Planning, Technical Feasibility,* and *Financial Feasibility*), is less likely to be successful in this criterion.

The Department will give less weight to the two Secondary Selection Criteria (*Innovation* and *Partnership*) than to the two Primary Selection Criteria (*Long-Term Outcomes* and *Jobs Creation & Economic Stimulus*). The two Secondary Selection Criteria will be rated equally.

As noted above in Section II(C) (*Program-Specific Criteria*), the Program-Specific Criteria will not be given ratings and will only be used to the extent the Department needs to differentiate and assign priority among similar projects that have similar ratings based on the selection criteria outlined above in Section II(A) (*Selection Criteria*).

The following table summarizes the weighting of the selection criteria, as described in the preceding paragraphs:

| | |
|---|---|
| Long-Term Outcomes | The Department will give more weight to this criterion than to either of the Secondary Selection Criteria. In addition, this criterion has a minimum threshold requirement. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in this criterion will not proceed in the evaluation process. |
| Jobs Creation & Economic Stimulus | The Department will give more weight to this criterion than to either of the Secondary Selection Criteria. This criterion will be considered after it is determined that a project demonstrates a likelihood of significant long-term benefits in at least one of the five long-term outcomes identified in the long-term outcomes criterion. |
| Innovation & Partnership | The Department will give less weight to these criteria than to the Primary Selection Criteria. |
| Program-Specific Criteria | The Department will only give weight to these criteria to the extent the Department needs to differentiate multiple similar projects that are rated similarly based on the Primary and Secondary Selection Criteria. |

To be selected for a TIGER Discretionary Grant, a project must be an Eligible Project and the applicant must be an Eligible Applicant. The Department may consider one or more components of a large project to be an Eligible Project, but only to the extent that the components themselves, not the project of which they are a part, are Eligible Projects and satisfy the selection criteria specified in this notice. For these projects, the benefits described in an application must be related to the components of the project for which funding is requested, not the full project of which they are a part.

*C. Distribution of Funds*

As noted above in Section I (*Background*), the Recovery Act prohibits the award of more than 20

percent of the funds made available under this program to projects in any one State. The Recovery Act also requires that the Department take measures to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. The Department will apply an initial unconstrained competitive rating process based on the selection criteria and program-specific criteria identified above in Section II(A) (*Selection Criteria*) and Section II(C) (*Program-Specific Criteria*) to determine a preliminary list of projects recommended for TIGER Discretionary Grants. The Department will then analyze the preliminary list and determine whether the purely competitive ratings are consistent with distributional requirements of the Recovery Act. If necessary, the Department will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

As noted above in Section II(B)(2)(b)(i) (*Jurisdictional & Stakeholder Collaboration*), applications submitted jointly by multiple States should include an allocation of project costs to assist the Department in making these determinations. In addition, the Department will use the subsidy and administrative cost estimate, not the principal amount of credit assistance, to determine any TIGER TIFIA Payment's effect on these distributional requirements.

*D. Transparency of Process*

In the interest of transparency, the Department will disclose as much of the information related to its evaluation process as is practical. The Department expects that the TIGER Discretionary Grants program may be reviewed and/or audited by Congress, the U.S. Government Accountability Office, the Department's Inspector General, or others, and has and will continue to take steps to document its decision making process.

## IV. Grant Administration

The Department expects that each TIGER Discretionary Grant will be administered by the modal administration in the Department with the most experience and/or expertise in the relevant project area (the ''Cognizant Modal Administration''), pursuant to a grant agreement between the TIGER Discretionary Grant recipient and the Cognizant Modal Administration. In accordance with the Recovery Act, the Secretary has the discretion to delegate such responsibilities.

Applicable Federal laws, rules and regulations will apply to projects that receive TIGER Discretionary Grants, including all of the requirements included in the Recovery Act.

As noted above in Section II(B)(1)(b) (*Jobs Creation & Economic Stimulus*), how soon after award a project is expected to expend Grant Funds and start construction will be considered on a case-by-case basis and will be specified in the project-specific grant agreements. The Department reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. The Department's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2011.

## V. Waiver of Minimum Grant Size Requirement

The Department has discretion under the Recovery Act to waive the $20 million minimum grant size requirement for Smaller Projects. Applicants for TIGER Discretionary Grants of less than $20 million for Smaller Projects are encouraged to apply and should address the same criteria as applicants for TIGER Discretionary Grants in excess of $20 million. The term ''grant'' in this provision of the Recovery Act does not include TIGER TIFIA Payments.

## VI. TIGER TIFIA Payments

Up to $200 million of the $1.5 billion available for TIGER Discretionary Grants may be used for TIGER TIFIA Payments. Given the average subsidy cost of the existing TIFIA portfolio, $200 million in TIGER TIFIA Payments could support approximately $2 billion in Federal credit assistance. Applicants seeking TIGER TIFIA Payments should apply in accordance with all of the criteria and guidance specified in this notice for TIGER Discretionary Grant applicants and will be evaluated concurrently with all other applications. Any applicant seeking a TIGER TIFIA Payment is required to comply with all of the TIFIA program's standard application and approval requirements, including submission of a Letter of Interest prior to submission of a TIFIA application (the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/).* The Letter of Interest must be submitted at least six weeks prior to the Application Deadline.

The Department does not expect applicants for TIGER TIFIA Payments to have received an instrument from TIFIA obligating Federal credit assistance for the project before the application is submitted; however, applicants should demonstrate that they are ready to proceed rapidly upon receipt of a TIGER TIFIA Payment in accordance with the guidance specified above in Section II(B)(1)(b) (*Job Creation & Economic Stimulus*). The Department's TIFIA Joint Program Office will assist the Department in determining a project's readiness to proceed rapidly upon receipt of a TIGER TIFIA Payment.

Applicants seeking TIGER TIFIA Payments may also apply for a TIGER Discretionary Grant for the same project and must indicate the type(s) of funding for which they are applying clearly on the face of their applications. An applicant for a TIGER TIFIA Payment must submit an application pursuant to this notice for a TIGER TIFIA Payment even if it does not wish to apply for a TIGER Discretionary Grant.

Unless otherwise expressly noted herein, any and all requirements that apply to TIGER Discretionary Grants pursuant to the Recovery Act, this notice, or otherwise, including all reporting and Recovery Act related requirements, apply to TIGER TIFIA Payments. TIFIA applicants that do not receive TIGER TIFIA Payments will not be required to comply with any of these requirements.

## VII. Contents of Application

An applicant for a TIGER Discretionary Grant should include all of the information requested below in its application. The Department reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. To the extent practical, the Department encourages applicants to provide data and evidence of project merits in a form that is publicly available or verifiable. For TIGER TIFIA Payments, these requirements apply only to the applications required under this notice; the standard TIFIA loan application requirements, including the standard $30,000.00 application fee, are separately described in the Program Guide and Application Form found at *http://tifia.fhwa.dot.gov/.*

*A. Length of Applications*

The narrative portion of an application should not exceed 25 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided, but should be limited to relevant

information. If possible, Web site links to supporting documentation should be provided rather than copies of these materials. At the applicant's discretion, relevant materials provided previously to a Cognizant Modal Administration (as defined below) in support of a different DOT discretionary program (for example, New Starts or TIFIA) may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted for the TIGER Discretionary Grant application.

*B. Contact Information*

An application should include the name, phone number, e-mail address and organization address of the primary point of contact for the applicant. The Department will use this information to inform parties of the Department's decision regarding selection of projects, as well as to contact parties in the event that the Department needs additional information about an application.

*C. Project Description*

An application should include a detailed description of the proposed project and geospatial data for the project, including a map of the project's location and its connections to existing transportation infrastructure. An application should also include a description of how the project addresses the needs of an urban and/or rural area. An application should clearly describe the transportation challenges that the project aims to address, and how the project will address these challenges. This description should include relevant data such as, for example, passenger or freight volumes, congestion levels, infrastructure condition, or safety experience.

*D. Project Parties*

An application should include information about the grant recipient and other project parties.

*E. Grant Funds and Sources and Uses of Project Funds*

An application should include information about the amount of grant funding requested, sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with TIGER Discretionary Grant funds, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs).

*F. Selection Criteria*

An application must include information required for the Department to assess each of the criteria specified in Section II(A) (*Selection Criteria*), as such criteria are explained in Section II(B) (*Additional Guidance on Selection Criteria*), and each of the relevant criteria specified in Section II(C) (*Program-Specific Criteria*). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits identified above in item A (*Length of Applications*). If an applicant is unsure whether any of the program-specific criteria apply to its project and should be addressed in its application the applicant should contact the Department pursuant to the procedures specified below in Section X (*Questions and Clarifications*). Information provided pursuant to this paragraph must be quantified, to the extent possible, to describe the project's impacts on the Nation, a metropolitan area, or a region. Information provided pursuant to this paragraph should include projections for both the build and no-build scenarios for the project for a point in time at least 20 years beyond the project's completion date or the lifespan of the project, whichever is closest to the present.

*G. Federal Wage Rate Requirement*

An application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.

*H. National Environmental Policy Act Requirement*

An application must detail whether the project will significantly impact the natural, social and/or economic environment. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to, the final Categorical Exclusion, Finding of No Significant Impact or Record of Decision. If the NEPA process is underway but not complete, the application must detail where the project is in the process, indicate the anticipated date of completion and provide a Web site link or other reference to copies of any NEPA documents prepared.

*I. Environmentally Related Federal, State and Local Actions*

An application must indicate whether the proposed project is likely to require actions by other agencies (*e.g.,* permits), indicate the status of such actions and provide a Web site link or other reference to materials submitted to the other agencies, and/or demonstrate compliance with other Federal, State and local regulations as applicable, including, but not limited to, Section 4(f) *Parklands, Recreation Areas, Refuges, & Historic Properties;* Section 106 *Historic and Culturally Significant Properties;* Clean Water Act *Wetlands and Water;* Executive Orders *Wetlands, Floodplains, Environmental Justice;* Clean Air Act *Air Quality (specifically note if the project is located in a nonattainment area);* Endangered Species Act *Threatened and Endangered Biological Resources;* Magnuson-Stevens Fishery Conservation and Management Act *Essential Fish Habitat;* The Bald and Golden Eagle Protection Act; and/or any State and local requirements.

*J. Protection of Confidential Business Information*

All information submitted as part of or in support of an application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

*K. First Page of Application*

The first page of an application should clearly identify (i) what type of project is the proposed project (highway, transit, rail, port or other), (ii) information about the location of the project, including State, city, county and congressional district, (iii) whether

the project is in an urban or rural area, and (iv) the amount in dollars of Grant Funds that the applicant is seeking.

Recipients of TIGER Discretionary Grants and their first-tier sub-awardees will be required to have a DUNS number (*http://www.dnb.com)* and a current registration in the Central Contractor Registration (*http://www.ccr.gov*). While these items do not need to be provided as part of the application, a TIGER Discretionary Grant will not be awarded if a recipient or first-tier sub-awardee does not have these items.

**VIII. Project Benefits**

The Department expects to identify and report on the benefits of the projects that it funds with TIGER Discretionary Grants. To this end, the Department may request that recipients of TIGER Discretionary Grants cooperate in Departmental efforts to collect and report on information related to the benefits produced by the projects that receive TIGER Discretionary Grants.

In addition to the creation and preservation of jobs and other benefits that the Department is required to track and report pursuant to the Recovery Act, the benefits that the Department reports on may include the following: (1) Improved condition of existing transportation facilities and systems; (2) long-term growth in employment, production or other high-value economic activity; (3) improved livability of communities across the United States; (4) improved energy efficiency, reduced dependence on oil and reduced greenhouse gas emissions; (5) reduced adverse impacts of transportation on the natural environment; (6) reduced number, rate and consequences of surface transportation-related crashes, injuries and fatalities; (7) greater use of innovative technology and innovative approaches to transportation funding and project delivery; (8) greater collaboration with State and local governments, other public entities, private entities, nonprofit entities, or other non-traditional partners; or (9) greater integration of transportation decision making with decision making by other public agencies with similar public service objectives.

Because of the limited nature of this program, these benefits are likely to be reported on a project-by-project basis and trends across projects that were selected for TIGER Discretionary Grants may not be readily available. In addition, because many of these benefits are long-term outcomes, it may be years before the value of the investments can be quantified and fully reported. The Department is considering the most appropriate way to collect and report information about these potential project benefits.

**IX. Reporting Requirements**

*A. Section 1201(c): Maintenance of Effort: Reporting Requirements*

Pursuant to the Recovery Act, entities receiving TIGER Discretionary Grants will be required to report on grant activities on a routine basis. Section 1201(c) of the Recovery Act (*Maintenance of Effort: Reporting Requirements*), under General Provision—Department of Transportation—imposes an obligation on entities receiving TIGER Discretionary Grants, along with other Department grantees receiving funds from the Department's Covered Programs, to submit periodic reports to the agency from which funds were received. Section 1201(c)(2) requires that such reports include, for each Covered Program (which includes the TIGER Discretionary Grant program) the following information: the amount of Grant Funds appropriated, allocated, obligated, and outlayed under the appropriation; the number of projects put out to bid under the appropriation and the amount of Grant Funds associated with these contracts; the number of projects for which contracts have been awarded under the appropriation and the amount of Grant Funds associated with these contracts; the number of projects for which work has begun under these contracts and the associated amount of Grant Funds; the number of projects for which work has been completed and the associated amount of Grant Funds; the number of direct, on-project jobs created or sustained by the Grant Funds for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in associated supplying industries, including the number of job-years created and total increase in employment since February 17, 2009; and the actual aggregate expenditures by each recipient from State sources for projects eligible for funding under the program between February 17, 2009, and September 30, 2010, compared to the level of such expenditures planned to occur during this period as of February 17, 2009.

According to the statute, grant recipients must submit the first of these reports not later than 90 days from February 17, 2009, and must submit updated reports not later than 180 days, 1 year, 2 years, and 3 years after that date. Due to the unique timeframe for TIGER Discretionary Grant awards, TIGER Discretionary Grant recipients should submit the first of such reports on the first due date following the award of Grant Funds and on each subsequent due date thereafter.

*B. Section 1512: Reports on Use of Funds*

Section 1512 of the Recovery Act (*Reports on Use of Funds*) requires any entity that received TIGER Discretionary Grants to submit a report not later than 10 days after the end of each calendar quarter as a condition of receiving funding under the Recovery Act. Pursuant to the OMB Guidance (which is available at *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf*), recipients must report to OMB beginning 10 days after the end of the first calendar quarter after funds are awarded. Recipients should refer to the OMB Guidance for more detailed instructions on such reports. OMB is currently developing a government-wide central reporting system. Detailed instructions for centrally reporting the required information will be made available at *http://www.FederalReporting.gov.*

*C. Section 1609: Environmental Reporting*

Section 1609(c) of the Recovery Act requires that Federal agencies report via the President (specifically, to the White House Council on Environmental Quality) every 90 days following enactment of the Recovery Act on the status of projects funded under the Recovery Act with respect to compliance with the National Environmental Policy Act.

To satisfy the purposes of the Recovery Act, grant recipients may be required to provide additional information in response to requests from OMB, the Congressional Budget Office, the Government Accountability Office, or the Department's Inspector General. The Department will inform grant recipients if and when such additional reports are required.

Further information about how grant recipients will be expected to comply with the reporting requirements of the Recovery Act will be provided in the individual grant agreements signed by recipients of TIGER Discretionary Grants.

*X. Certification Requirements*

To the extent applicable, grantees must comply with the Certification requirements of the Recovery Act. These include the Certification requirement in Section 1511 (*Transparency and*

*Oversight*), requiring the Governor, mayor, or other chief executive, as appropriate, to certify that the infrastructure investment has received the full review and vetting required by law and accepting responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Certification under Section 1511 is a condition for award of TIGER Discretionary Grants to State or local agencies. On February 27, 2009, Secretary of Transportation Ray LaHood sent a letter to the Governors of each State providing guidance and a template for the Certifications required by the Recovery Act, a copy of which is available on the Department's Recovery Act Web site, at *http://www.dot.gov/recovery/*.

Pursuant to Section 1511, for funds made available to State or local governments for transportation infrastructure investments, including Grant Funds under the TIGER Discretionary Grants program, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment (1) received the full review and vetting required by law; and (2) that the chief executive accepts responsibility that it is an appropriate use of taxpayer dollars. This Certification must be executed and posted on a Web site and linked to Recovery.gov prior to the recipient of a TIGER Discretionary Grant receiving Grant Funds. If the potential project is a highway or transit project and it is included in the Statewide Transportation Improvement Program (STIP) with the specific information required by Section 1511 (a description of the investment, the estimated total cost, and the amount of ARRA funds to be used), it may be included in the Governor's Section 1511 Certification covering highway and transit projects in a State. One way for the Governor's Certification to satisfy the Section 1511 requirement, is for the Certification to state that the project is included in the STIP and therefore has completed the TIP/STIP planning process. In this case, the Governor's Certification must also provide a link to the public web posting of the STIP that includes (or will include) any highway and transit project designated to receive Recovery Act funding. If the project is not included in the STIP, a separate Certification for the potential TIGER Discretionary Grant project must be executed, attaching the relevant information or linking to a public Web site where the information may be obtained. This Certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted online and linked to the Web site Recovery.gov. The Certification must also state that the projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars.

All Certifications, once executed, shall be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary for Transportation Policy, at *TigerTeam.Leads@dot.gov*. Certifications may be submitted via e-mail as electronic, scanned copies, with original signed versions to follow via U.S. mail. As required by the Recovery Act, Certifications under Section 1511 shall be immediately posted on a Web site and linked to the Web site Recovery.gov.

## XI. Questions and Clarifications

Questions about this notice should be submitted to the TIGER Discretionary Grants program manager via e-mail at *TIGERGrants@dot.gov*. The Department will regularly post answers to these questions and other important clarifications on the Department's Web site at *http://www.dot.gov/recovery/ost/*.

Issued On: *June 12, 2009.*

**Ray LaHood,**

*Secretary.*

[FR Doc. E9–14262 Filed 6–16–09; 8:45 am]

BILLING CODE 4910–9X–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2009–0001–N–13]**

### Notice and Request for Comments

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 6, 2009 (74 FR 15588).

**DATES:** Comments must be submitted on or before July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 6, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 74 FR 15588. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The current requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Stenciling Reporting Mark on Freight Cars.

*OMB Control Number:* 2130–0520.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private

car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

*Annual Estimated Burden Hours:* 18,750 hours.

*Title:* Rear-End Marking Devices.

*OMB Control Number:* 2130–0523.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current ''Guidelines For Testing of Rear End Marking Devices.'' Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

*Annual Estimated Burden Hours:* 89 hours.

*Title:* Locomotive Certification (Noise Compliance Regulations).

*OMB Control Number:* 2130–0527.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

*Annual Estimated Burden Hours:* 2,767 hours.

**ADDRESSES:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, *Attention:* FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on June 11, 2009.

**Donna M. Alwine,**

*Acting Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. E9–14254 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### FAA Notice of Intent to Prepare an Environmental Assessment; Ann Arbor Municipal Airport, Ann Arbor, MI

**AGENCY:** The Federal Aviation Administration, Department of Transportation.

**ACTION:** Notice of Intent to prepare an Environmental Assessment (EA) and conduct Citizen Advisory Meetings.

**SUMMARY:** The FAA has delegated selected responsibilities for compliance with the National Environmental Policy Act to the MDOT as part of the State Block Grant Program authorized under Title 49 U.S.C., Section 47128. This notice is to advise the public pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(c) that MDOT intends to prepare an EA for the proposed extension of runway 6/24 at the Ann Arbor Municipal Airport. While not required for an EA, the FAA and MDOT are issuing this Notice of Intent to facilitate public involvement. This EA will assess the potential environmental impacts resulting from the proposed extension of runway 6/24 from 3,500 feet to 4,300 feet. All reasonable alternatives will be considered including a no action alternative.

**FOR FURTHER INFORMATION CONTACT:** Ms. Molly Lamrouex, Environmental Specialist, Bureau of Aeronautics and Freight Services, MDOT, 2700 Port Lansing Road, Lansing, Michigan (517) 335–9866.

**SUPPLEMENTARY INFORMATION:** The EA will include analysis which will be used to evaluate the potential environmental impacts in the study area. During scoping, and upon publication of a draft EA and a final EA, MDOT will be coordinating with federal, state and local agencies, as well as the public, to obtain comments and suggestions regarding the EA for the proposed project. The EA will assess potential impacts and reasonable alternatives including a no action alternative pursuant to NEPA; FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts; FAA Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions; and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, and other appropriate Agency guidance.

*Public Input Process:* During development of the draft EA, a series of meetings to provide for public input will be held to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EA. For more information regarding the meetings for public input contact Molly Lamrouex, MDOT Bureau of Aeronautics and Freight Services, (517) 335–9866.

Issued in Romulus, Michigan, June 4, 2009.

**Matthew J. Thys,**

*Manager, Detroit Airports District Office, Great Lakes Region.*

[FR Doc. E9–14167 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

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

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the Nissan North America, Inc.'s (Nissan) petition for an exemption of the Murano vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in

reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). Nissan requested confidential treatment for the information and attachments it submitted in support of its petition. The agency will address Nissan's request for confidential treatment by separate letter.

**DATES:** The exemption granted by this notice is effective beginning with the 2010 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–302, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–0073.

**SUPPLEMENTAL INFORMATION:** In a petition dated December 19, 2008, Nissan requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the MY 2010 Nissan Murano vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new Murano vehicle line. Although specific details of the system's operation, design, effectiveness and durability have been accorded confidential treatment, NHTSA is, for the purposes of this petition, disclosing the following general information. Nissan will install a passive, transponder-based, electronic engine immobilizer device as standard equipment on its Murano line beginning with MY 2010. Nissan stated that the immobilizer system prevents normal operation of the vehicle without the use of a special key. Turning off the ignition key automatically activates the immobilizer device. Features of the antitheft device will include an engine electronic control module (ECM), immobilizer control (BCM), antenna and transponder key. Nissan also stated that its device will not incorporate an audible and visual alarm feature as standard equipment, but the alarms will be incorporated on some of its models. Nissan's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, Nissan provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided its own test information on the reliability and durability of its proposed device and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Additionally, Nissan has incorporated a ''Security'' indicator light in the vehicle which will provide a signal to inform the vehicle owner as to the status of the immobilizer device. When the ignition key is turned to the ''OFF'' position, the indicator light begins flashing to reliably notify the operator that the immobilizer device is activated.

Nissan compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Nissan stated that its antitheft device is technologically superior and at least as effective as those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Nissan stated that NHTSA's theft data have shown a significant reduction in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes to install on the new line. Specifically, Nissan stated that it believes that its proposed device is technologically superior to devices installed on the Buick Riviera and Oldsmobile Aurora vehicle lines, which have already been granted a parts-marking exemption by the agency. Nissan concludes that the data indicates that the immobilizer was effective in contributing to the theft rate reduction for these lines. Nissan stated that it believes the device it proposes to install on the MY 2010 Murano will be at least effective as those systems. By supplemental letter dated May 22, 2009, Nissan provided further support of its belief that its proposed device is at least as effective as other similar devices installed in vehicle lines for which the agency has granted exemptions. Specifically, Nissan referenced information provided by the National Insurance Crime Bureau, which showed a 70% reduction in theft when comparing the MY 1987 Ford Mustang with a standard immobilizer to the MY 1995 Ford Mustang without an immobilizer. Additionally, Nissan referenced data from the Highway Loss Data Institute which showed that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Nissan also stated that its Nissan Pathfinder vehicles experienced a significant theft rate reduction from MY 2000 to 2001 with the implementation of an engine immobilizer system as standard equipment. Specifically, the theft rate dropped from 3.0363 in MY 2000 to 1.9146 in MY 2001. The MY 2006 theft rate for the Nissan Pathfinder is 1.3474, still significantly below the median theft rate of 3.5826.

The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions. Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Murano vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device.

The agency concludes that the device will provide the four types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the Murano vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with the 2010 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements

incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Nissan decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 12, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E9–14253 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Guidance for the High-Speed Rail/ Intercity Passenger Rail Grant Program

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Announcement of availability of guidance.

**SUMMARY:** On June 17, 2009, FRA intends to issue guidance for the High-Speed Rail (HSR)/Intercity Passenger Rail (IPR) Grant Program. FRA will post this guidance on its Web site at: *http://www.fra.dot.gov/us/content/2243.* Subsequently, FRA will publish this guidance in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the guidance document and grant program, please contact the FRA HSR/IPR Program Manager via e-mail: *ARRA.Rail@dot.gov,* or by mail: Office of Passenger and Freight Programs, Federal Railroad Administration, 1200 New Jersey Avenue, MS–20, SE., Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:** The guidance document and additional information about the HSR/IPR Grant Program are available on FRA's public Web site at: *http://www.fra.dot.gov/us/content/2243.* This Program builds upon the President's ''Vision for High-Speed Rail in America,'' which was issued on April 16, 2009, and which describes a collaborative effort among the Federal Government, States, railroads and other key stakeholders to help transform America's transportation system by investing in an efficient, high-speed passenger rail network of 100 to 600 mile intercity corridors. The guidance document details HSR/IPR Grant Program funding opportunities as well as specific application requirements and procedures. The funds are being made available under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Department of Transportation Appropriations Acts of fiscal years 2008 and 2009. ARRA requires the Secretary of Transportation to issue interim guidance to applicants within 120 days of enactment. In addition to being available on the FRA's Web site, the guidance will be published in the **Federal Register** at a later date.

Issued in Washington, DC, on June 12, 2009.

**Paul Nissenbaum,**

*Director, Office of Passenger and Freight Programs.*

[FR Doc. E9–14251 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Program Management Committee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Program Management Committee meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

**DATES:** The meeting will be held July 1, 2009 starting at 8:30 a.m. to 1:30 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of April 14, 2009 PMC meeting, RTCA Paper No. 112–09/PMC–718.
- Publication Consideration/ Approval:
- Final Draft, Change 1 to DO–185B, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System II (TCAS II), RTCA Paper No. 130–09/PMC–724, prepared by SC–147.
- Final Draft, Change 1 to DO–300, Minimum Operational Performance Standards (MOPS) for Traffic Alert and Collision Avoidance System II (TCAS II) Hybrid Surveillance, RTCA Paper No. 131–09/PMC–725, prepared by SC–147.
- Integration and Coordination Committee (ICC)—Report.
- Action Item Review:
- DO–222—Inmarsat AMS(R)S—Discussion—Status—Review/Approve Terms of Reference;
- SC–220—Automatic Flight Guidance and Control—Discussion—Review/Approve Terms of Reference;
- SC–218—Future ADS–B/TCAS Relationships—Discussion—Status;
- SC–217—Terrain and Airport Databases—Discussion—Status—Review/Approve Terms of Reference;
- SC–214—Standards for Air Traffic Data Communications Services—Discussion—Status—Review/Approve Terms of Reference;

• SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Status Review;
• Airport Surface Wireless Link—Discussion—Possible New Special Committee;
• Discussion
• Special Committee Chairman's Reports;
• Closing Plenary (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 9, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9–14164 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Third Meeting—Special Committee 222— Inmarsat Aeronautical Mobile Satellite (Route) Services

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 222 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

**DATES:** The meeting will be held Wednesday, July 8, 1 p.m.–5 p.m.; a joint meeting with AEEC AGCS on Thursday, July 9, 8:30 a.m.–5 p.m.; and Friday, July 10, 8:30 a.m.–11:30 a.m. (if necessary, possible working group of the whole).

**ADDRESSES:** Boeing facilities at Building 25–01.1, Cafe´ Special Function Room, Longacres Park, Southcenter/Tukwila Area, Washington, USA.

This meeting is to be held in conjunction with the AEEC Air-Ground Communications Subcommittee meeting.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**Note:** Business Casual.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 222, Inmarsat Aeronautical Mobile Satellite (Route) Services. The agenda will include:

**Wednesday, July 8, 2009 1 P.M. Through Friday, July 10, 2009**

• Opening Plenary (Introductions and Opening Remarks).
• Review and Approval of Summary for the Second Meeting of Special Committee 222 held April 22–23, 2009 at RTCA, Washington, DC; RTCA Paper No. SC222/WP–020.
• Review and Approval of the Agenda for the Third Meeting of SC–222, WP–022.
• Old Business.
  ○ Review of/reports for the currently active Action Items regarding SBB Safety issues.
  ○ Inmarsat: Complete the tables for DO–262 and DO–270 listing in Working Paper WP–4.
  ○ AIRBUS/Roser Roca-Toha list of questions to Orville Nyhus.
  ○ Chuck LaBerge RCP document on the SC–222 Web site.
  ○ Carole Plessy-Gourdan ATCt interference test procedures on the SC–222 Web site.
  ○ Chuck LaBerge updated MASPS two weeks prior to the 3rd meeting of SC–222.
  ○ Manufacturers comments by May 1, 2009 on Carole Plessy-Gourdon's test procedures.
  ○ Kevin Mattison the COCR on the SC–222 Web site.
  ○ Chuck LaBerge Sky Terra schedule for rollout of ATCt and Inmarsat schedule for SBB to compare timing requirements for operating in the presence of interference.
  ○ Boeing/Glenn Torgersen and the FAA/Kevin Mattison findings with regard to SATCOM dispatch procedures.
• Working Papers, Discussions, and Schedule Review regarding ATCt issues.
  ○ Aero Classic Equipment Interference Test Results—Carole Plessy-Gourdon, Inmarsat.
  ○ Performance of Unfiltered AMS(R)S Equipment in the Presence of ATCt Interference—Gustavo Nader, Sky Terra.
• Working Papers, Discussions, and Schedule Review regarding SBB Safety Services.
  ○ Review draft DO–270 technique-specific material.
  ○ Review of related working papers, if any.
• Closing Plenary (Other Business, Review of Assignments and Action Items, Date and Location for the 4th Meeting of SC–222, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 8, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9–14165 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–23]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before July 17, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2009–0291 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
• *Hand Delivery:* Bring comments to the Docket Management Facility in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

**FOR FURTHER INFORMATION CONTACT** Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 12, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2009–0291.

*Petitioner:* Embry-Riddle.

*Section of 14 CFR Affected:* 14 CFR 141.77(c)(2).

*Description of Relief Sought:* Embry-Riddle has petitioned the Federal Aviation Administration to permit 100 percent of their students from their part 142 training center to transfer to an equivalent curriculum under their part 141 pilot school certificate.

[FR Doc. E9–14233 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–22]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR part 23, § 23.979(b)(2). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before July 7, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2009–0444 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Pete Rouse, 816–329–4135, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 11, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2009–0444.

*Petitioner:* Cessna Aircraft Company.

*Section of 14 CFR Affected:* 14 CFR 23.979(b)(2)

*Description of Relief Sought:* Petitioner requests relief from pressure fueling system requirements for its Cessna Model 525C airplane because its single point refuel/defuel system as designed offers a higher level of protection from potential ignition resources.

[FR Doc. E9–14200 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2006–25755]**

### Operating Limitations At Laguardia Airport

**ACTION:** Notice of order to show cause and request for information.

**SUMMARY:** The FAA is issuing an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to extend through October 30, 2010, the December 13, 2006, order limiting the number of scheduled and unscheduled operations at LaGuardia Airport during peak operating hours. The text of the order to show cause is set forth in this notice.

**DATES:** Any written information that responds to the FAA's order to show cause must be submitted by July 1, 2009.

**ADDRESSES:** You may submit written information, identified by docket number FAA–2006–25755, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments by mail to Docket Operations, U.S. Department of Transportation, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Persons wishing to receive confirmation of receipt of their written submission

should include a self-addressed stamped postcard.

• *Hand Delivery:* Deliver comments to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Facsimile:* Fax comments to the docket operations personnel at 202–493–2251.

*Privacy:* We will post all comments that we receive, without change, at *http://www.regulations.gov,* including any personal information that you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments in any of our dockets, including the name of the individual sending the comment or signing the comment on behalf of an association, business, labor union, or other entity or organization. You may review the DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477–78 (April 11, 2000), or you may find it at *http://docketsinfo.dot.gov.*

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

**FOR FURTHER INFORMATION CONTACT:** James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267–8323; e-mail—*james.tegtmeier@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Order To Show Cause

The Federal Aviation Administration (FAA) has tentatively determined that it will extend through October 30, 2010, the FAA's December 13, 2006, order limiting scheduled and unscheduled operations at LaGuardia Airport, as subsequently amended (December 2006 order).[1] This order to show cause invites air carriers and other interested persons to submit comments in Docket FAA–2006–25755 on this proposal to extend the duration of the December 2006 order.[2]

As a result of the limited capacity of LaGuardia's two-runway configuration, the airport cannot accommodate the number of scheduled and unscheduled flights that operators would like to conduct there without causing significant congestion-related delays. LaGuardia was one of the original U.S. airports at which the FAA capped the number of peak-hour operations under the High Density Rule.[3] The High Density Rule limited the number of scheduled operations at the airport to 62 per hour.

In a statute enacted in April 2000, Congress began to phase out the High Density Rule at LaGuardia and other airports.[4] Before fully extinguishing the High Density Rule at LaGuardia on January 1, 2007, the statute directed the Secretary of Transportation immediately to grant a number of exemptions from the High Density Rule for specific types of scheduled operations.[5] Demand for exemptions to operate scheduled service at LaGuardia soared. By November 2000, the debilitating delays that resulted from the surging demand required the FAA to roll back and limit the number of operations at LaGuardia.[6] The FAA limited the peak-hour scheduled operations at a total of 75 hourly departures and arrivals.

In the ensuing years, the FAA examined and proposed various alternatives to the High Density Rule in an effort to control congestion at LaGuardia.[7] When it became apparent that the FAA would not have a replacement rule in place before the High Density Rule expired at LaGuardia, and recognizing that LaGuardia is prone to overscheduling, the FAA issued the December 2006 order to limit the number of scheduled and unscheduled operations at the airport until the FAA could issue a final rule. During much of the time that the December 2006 order has remained in effect, the airport has continued to experience significant congestion-related delays. As a result, the FAA reduced the peak-hour limit on unscheduled operations from six to three.[8] More recently, the FAA reduced the peak-hour limit on scheduled operations from 75 to 71.[9]

The FAA established the order's October 2009 expiration date to permit time for a recently issued final rule to take effect to control congestion at LaGuardia.[10] However, the rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit prior to the rule's effective date, and the FAA is currently soliciting comments on a proposal to rescind the final rule.[11] As a result of the FAA's reconsideration of the rule, the court is holding in abeyance the briefing schedule in the rule's associated litigation.

In light of the events that have transpired since the December 2006 order took effect, it is now unlikely that the FAA will have an effective final rule on the order's current expiration date. In the absence of the FAA's extension of the order, the FAA anticipates a return of the congestion-related delays that required the FAA to limit the number of operations at the airport. The hourly capacity at LaGuardia has not increased since the order took effect. Because the demand for operations at New York-area airports remains high, the FAA has determined that an extension of the December 2006 order appears to be appropriate while the FAA identifies the appropriate long-term solution to congestion at LaGuardia.

*Order to Show Cause:*

To prevent a recurrence of overscheduling at LaGuardia during the interim between the expiration of the December 2006 order on October 24, 2009, and the effective date of a replacement rule, the FAA tentatively intends to extend the December 2006 order. The order will continue to apply to both scheduled and unscheduled operations at the airport. Maintaining the existing order for an additional, finite period constitutes a reasonable approach to preventing unacceptable congestion and delays at LaGuardia until a long-term measure is implemented. The December 2006 order, as extended, would expire on October 30, 2010.

Accordingly, the FAA directs all interested persons to show cause why the FAA should not make final its tentative findings and tentative decision to extend the December 2006 order through October 30, 2010, by filing their

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date of the December 2006 order until October 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71).

[2] The FAA separately solicited comments on proposals to extend the January 15, 2008, order limiting scheduled operations at John F. Kennedy International Airport (JFK) and the May 15, 2008, order limiting scheduled operations at Newark Liberty International Airport (Newark). The public may file or review documents related to these proposals in Dockets FAA–2007–29320 (JFK) and FAA–2008–0221 (Newark).

[3] 33 FR 17,896, 17,898 (Dec. 3, 1968); 34 FR 2,603 (Feb. 26, 1969).

[4] 49 U.S.C. 41715(a)(2).

[5] 49 U.S.C. 41716.

[6] 65 FR 69,126, 69,127–28 (Nov. 15, 2000).

[7] 71 FR 51,360 (Aug. 29, 2006) (Notice of Proposed Rulemaking); 73 FR 20,846 (April 17, 2008) (Supplemental Notice of Proposed Rulemaking).

[8] 72 FR at 48,428.

[9] 74 FR at 2,646.

[10] 74 FR at 845.

[11] 74 FR 22,717 (May 14, 2009).

written views in Docket FAA–2006–25755. The FAA does not intend this request for the views of interested persons to address any issues related to the existing final rule or any future congestion management rule. Therefore, any submission to the current docket should be limited to the proposed extension of the December 2006 order.

Issued in Washington, DC, on June 11, 2009.

**Rebecca MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. E9–14168 Filed 6–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: Termination—Lincoln General Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 15 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6850.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds is terminated effective June 30, 2009. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2008 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 11, 2009.

**Kent Kuyumjian,**

*Comptroller and Deputy CFO.*

[FR Doc. E9–14162 Filed 6–16–09; 8:45 am]

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Federal Register

Wednesday,
June 17, 2009

# Part II

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Quino Checkerspot butterfly (*Euphydryas editha quino*); Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R8–ES–2008–0006; 92210–1117–0000–B4]**

**RIN 1018–AV23**

# Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Quino Checkerspot butterfly (*Euphydryas editha quino*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are designating final revised critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*) under the Endangered Species Act of 1973, as amended (Act). Approximately 62,125 acres (ac) (25,141 hectares (ha)) of habitat in San Diego and Riverside Counties, California, are being designated as critical habitat for the Quino checkerspot butterfly. This final revised designation constitutes a reduction of approximately 109,479 ac (44,299 ha) from the 2002 designation of critical habitat for the Quino checkerspot butterfly.

**DATES:** This rule becomes effective on July 17, 2009.

**ADDRESSES:** The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2008–0006 and *http://www.fws.gov/carlsbad/*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

We intend to discuss only those topics directly relevant to the designation of critical habitat for the Quino checkerspot butterfly under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), in this final revised critical habitat designation. For more information on the taxonomy, biology, and ecology of the Quino checkerspot butterfly, refer to the final listing rule published in the **Federal Register** on January 16, 1997 (62 FR 2313), the original final critical habitat rule published in the **Federal Register** on April 15, 2002 (67 FR 18356); the Recovery Plan for the Quino Checkerspot Butterfly (*Euphydryas editha quino*) (Service 2003a); and the proposed revised critical habitat designation published in the **Federal Register** on January 17, 2008 (73 FR 3328).

### *New Information on Subspecies' Description, Life History, Ecology, Habitat, and Range*

We received little new information pertaining to the description, life history, distribution, ecology, or habitat of the Quino checkerspot butterfly following the 2008 proposed rule to revise critical habitat for this subspecies. The following paragraphs discuss the new information that we received, including recent information about another host plant species brought to our attention, and clarification regarding the subspecies' likely expanded range and larval diapause. Please refer to the final listing rule published in the **Federal Register** on January 16, 1997 (62 FR 2313), and the proposed revised critical habitat designation published in the **Federal Register** on January 17, 2008 (72 FR 3328), for an in-depth discussion of the subspecies' biology.

In 2008, oviposition and larval development of the Quino checkerspot butterfly were recorded for the first time on a native host plant, *Collinsia concolor* (Chinese houses). The Quino checkerspot butterfly was observed using numerous individual *C. concolor* plants at multiple locations in Riverside County (Pratt 2008a, p. 1; 2008b, p. 1; 2008c, p. 1; 2008e, p. 1). Although *C. concolor* commonly occurs in habitats with *Plantago erecta* (erect plantain), *P. patagonica* (Patagonian plantain), and *Anterrhinum coulterianum* (Coulter's snapdragon) (Pratt 2001, pp. 42–43; Anderson 2008, pp. 2, 3), this plant is typically found on north-facing slopes in cooler and moister microclimates than where the other host plant species occur (Pratt 2001, p. 40: Pratt 2008b, p. 1). Quino checkerspot butterflies readily oviposit on *C. concolor* in captivity (Pratt 2001, p. 40). Relatively heavy but previously undocumented use of *C. concolor* at multiple high-elevation locations suggests that this host plant may become increasingly important for maintaining the Quino checkerspot butterfly population resilience as habitat conditions become warmer and drier (see below and the ''Summary of Comments and Recommendations'' section for additional discussion regarding climate change). If *C. concolor* is a novel host plant important for maintaining the resilience of established populations, it should also facilitate the subspecies' adaptation to environmental change that may result from climate change, including range shift (Pimm *et al.* 2001, p. 531; Thomas *et al.* 2001, pp. 577–581; Parmesan 2006, pp. 644, 645, 647). For example, increased preference for a novel host plant allowed the brown argus butterfly (*Aricia agestis*) to use habitats that were too cool for the host plants it already used, thus permitting the butterfly species to cross previously large geographic gaps in its distribution that lacked its formerly preferred host plant (Pimm *et al.* 2001, p. 531; Thomas *et al.* 2001, pp. 577–581).

Next, we did not discuss repeated diapause (the low-metabolic rate resting stage of the life cycle) in our January 17, 2008 (72 FR 3328) proposed revision to critical habitat. One peer reviewer suggested this was an important aspect of the subspecies' biology (see comment 9 below); therefore, we are adding discussion here. Diapause occurs during the larval stage, primarily during summer and fall (Service 2003a, pp. 7–8). Captive rearing and observation of Quino checkerspot butterfly larvae indicate repeated diapause is relatively common (over 50 percent likelihood for the first year; Pratt 2006, p. 10) and larvae can re-enter diapause up to three times (four diapause periods), but more than three diapause periods during an individual's life span is unusual (Pratt 2007a, pp. 10–13).

Finally, the discussion of Edith's checkerspot butterfly (*Euphydryas editha*; the Quino checkerspot butterfly is a subspecies of Edith's checkerspot) range shift in our January 17, 2008 (72 FR 33808), proposed revision to critical habitat requires clarification. Although locally adapted subspecies may shift their distribution within the middle of a greater species distribution (which appears to be occurring with the Quino checkerspot butterfly's elevation range), the northward latitudinal range expansion of subspecies of Edith's checkerspot butterfly implied by Parmesan's (1996) study does not apply to the Quino checkerspot butterfly. Because the subspecies' current northern range edge is approximately 26 miles (mi) (42 kilometers (km)) south of the historical range edge, any northward expansion of the Quino checkerspot butterfly's current range would

constitute recolonization within the subspecies' historical latitudinal range (San Bernardino and Ventura counties; see Service 2003a, pp. 1–3).

*Behavior and Population Structure*

The best available scientific data indicate that most Quino checkerspot butterfly populations have some degree of metapopulation structure (Service 2003a, p. 22) and display metapopulation dynamics characterized by highly variable habitat occupancy patterns and detectability, similar to most subspecies of Edith's checkerspot butterfly (Mattoni *et al.* 1997, p. 111; Service 2003a, pp. 21–27). Edith's checkerspot butterfly metapopulation structure is described by Ehrlich and Murphy (1987, p. 123) as the subdivision of a population into subpopulations that occupy clusters of habitat patches and interact extensively. Harrison *et al.* (1988, p. 360) described Edith's checkerspot butterfly metapopulation structure as: ''a set of [subpopulations] that are interdependent over ecological time.'' Although subpopulations within a metapopulation may change in size independently, the probability of a subpopulation existing at a given time is not independent, because they are linked by an extirpation and mutual recolonization process that occurs every 10 to 100 generations (Harrison *et al.* 1988, p. 360).

Rare high-density events and dispersal behavior are thought to be key elements of Edith's checkerspot butterfly population dynamics that structure populations. Harrison (1989, p. 1241) found that although dispersal direction from habitat patches seemed to be random in the bay checkerspot butterfly (*Euphydryas editha bayensis*), dispersing butterflies were most likely to move into habitat patches when they passed within approximately 163 feet (ft) (50 meters (m)) of those habitat patches. Dispersing bay checkerspot butterflies tended to remain in habitat patches where existing butterfly density was low (Harrison 1989, p. 1241). Bay checkerspot butterfly occupancy patterns also suggested that unoccupied habitat separated from occupied habitat by hilly terrain was less likely to be colonized than habitat separated by flat ground (Harrison 1989, p. 1241).

Harrison (1989, pp. 1241, 1242) concluded that the long-term habitat recolonization pattern of her study population was likely due to relatively large numbers of bay checkerspot butterflies having dispersed from persistent ''source'' subpopulations. Harrison (1989, p. 1239) found bay checkerspot butterfly habitat within 0.6 mi (1 km) of a source subpopulation is 100 percent likely to be colonized by immigrants from the source subpopulation. Harrison (1989, p. 1239) also recaptured a significant number of individuals in habitat 0.6 mi (1 km) from their release point. Over a 5–day period, 5 percent of butterflies released at a single location were recaptured in an isolated ''target habitat patch'' 0.6 mi (1 km) away (Harrison 1989, p. 1239). Assuming mostly random initial movement direction from the release location at such a great release distance from the recapture site (Harrison 1989, p. 1241), many individuals likely traveled similar or further distances outside the study area.

High habitat colonization rates probably only occur during rare outbreak years, when relatively high local densities combine with favorable establishment conditions in unoccupied habitat (Harrison 1989, p. 1242). These rare outbreak events are also thought to play a crucial role in Quino checkerspot butterfly metapopulation resilience and the subspecies' survival (Murphy and White 1984, p. 353; Ehrlich and Murphy 1987, p. 127). Therefore, protection and management of source subpopulations likely to provide immigrants to unoccupied habitat are required for conservation of the Quino checkerspot butterfly (Service 2003a, pp. 22, 25–26, 35, 94).

Long-distance dispersal has been documented in the Edith's checkerspot butterfly, and dispersal propensity is affected by local environmental conditions and subspecies' adaptation. White and Levin (1981, pp. 348–357) conducted the only mark-recapture movement study that included the Quino checkerspot butterfly. White and Levin (1981, pp. 348–357) studied within-habitat patch movement of the Quino and bay checkerspot butterfly subspecies in southern San Diego County (male bay checkerspots were released into Quino checkerspot butterfly habitat late in the flight season when offspring survival was not considered possible). They concluded that patterns of dispersal changed ''dramatically'' from year to year (White and Levin 1981, p. 348), and the Quino checkerspot butterfly was less sedentary than the more heavily studied bay checkerspot butterfly (White and Levin 1981, p. 105). Although the average mark-recapture distance traveled by a Quino checkerspot butterfly in White and Levin's (1981, p. 349) study was only 305 ft (93 m), movement records were limited to the local study area. White and Levin (1981, p. 349) stated, ''It seems likely from the lower rate of return in 1972 and from the observed pattern of out-dispersal that many marked animals dispersed beyond the area covered by our efforts that year. This out-dispersal might make the value for average distance [traveled] in 1972 an underestimate of significant magnitude.'' Long-distance movement in the bay checkerspot butterfly has been documented as far as 4 mi (6.4 km) (Murphy and Ehrlich 1980, p. 319) and 3.5 mi (5.6 km) (Harrison 1989, p. 1239).

The above information indicates that, although Edith's checkerspot butterflies appear to be capable of long-distance dispersal, their movement propensity is variable and driven by external environmental factors. By extension, contiguous habitat between two butterflies observed 1.2 mi (2 km) from each other is within reasonable flight distance of both individuals and should be considered part of a shared home range. Therefore, based on typical long-distance recapture records, we conclude that Quino checkerspot butterflies observed within approximately 1.2 mi (2 km) of each other in contiguous habitat belong to the same population, and contiguous habitat within at least 1.2 mi (2 km) of an observed Quino checkerspot butterfly is part of that individual's population distribution.

Delineating Population Distributions

The best scientific data available to us for use in delineating Quino checkerspot butterfly population distributions consist of geographic information system (GIS)-based habitat information, subspecies observation locations, and subspecies movement data from mark-release-recapture studies. Population-scale occupancy (a population distribution) is defined as all areas used by adults during the persistence time of a population (years to decades; Service 2003a, p. 24). Focused distribution studies over multiple years are required to quantify Quino checkerspot butterfly population distributions. Therefore, the Recovery Plan described Quino checkerspot butterfly population locations in terms of ''occurrence complexes'' (Service 2003a, p. 35), which were simple non-habitat-based estimators of population distributions (well-mixed or metapopulation structure) and population membership of observed butterflies. Occurrence complexes are mapped in the Recovery Plan using a 0.6-mi (1-km) movement radius from each butterfly observation and may be based on the observation of a single individual. Occurrence locations within at least 1.2 mi (2 km) of each other are considered to be part of the same occurrence complex, as these occurrences are proximal enough that

the observed butterflies were likely to have come from the same population (Service 2003a, p. 35).

Occurrence complexes may expand due to new butterfly observations, or contract due to habitat loss (for example, mapped occurrence complexes were limited by development, see Service 2003a p. 78). According to recorded Edith's checkerspot butterfly movement distances (Gilbert and Singer 1973, pp. 65, 66; Harrison *et al.* 1988, pp. 367–380; Harrison 1989, pp. 1239, 1240), occurrence complexes appropriately describe the area within which a significant proportion of the habitat patch associated with individual observed butterflies is likely to occur (see above discussion and Service 2003a, p. 35).

Some occurrence complexes were identified in the Recovery Plan (Service 2003a, p. 35) as ''core.'' Core occurrence complexes are those that appear to be centers of population density based on geographic size, number of reported individuals, repeated observations, and evidence of reproduction. Such population density centers are likely to contain ''source'' subpopulations for a Quino checkerspot butterfly metapopulation (Murphy and White 1984, p. 353; Ehrlich and Murphy 1987, p. 125; Mattoni *et al.* 1997, p. 111; Service 2003a pp. 25–26), or ''source'' populations for megapopulations (a group of populations also dependent on one another, but on a time scale greater than that of subpopulations; Service 2003a, pp. 21, 24, 25–26). A source subpopulation is one in which the emigration rate typically exceeds the immigration rate, and is thus a source of colonists for unoccupied habitat patches (Service 2003a, p. 166). Therefore, for the purposes of critical habitat designation, we defined a core occurrence complex as an area where at least two of the following criteria apply: (1) Surveyors reported 50 or more adults during a single survey at least once; (2) immature life stages were recorded; or (3) the geographic area within the occurrence complex (within 0.6 mi (1 km) of subspecies occurrences) is greater than 1,290 ac (522 ha; the size of the smallest Core Occurrence Complex where reproduction has been documented on multiple occasions and there are historical collection records indicating long-term resilience).

Status and Local Distribution of Populations in Riverside County

Occurrence data collected in Riverside County since publication of the Recovery Plan in 2003 resulted in expansion of all core occurrence complexes and merging of some core occurrence complexes with non-core occurrence complexes (see discussion below). In particular, occurrence data collections in Riverside County since listing (62 FR 2313; January 16, 1997) have continued almost annually to expand the known elevation limit of the subspecies' range (Pratt *et al.* 2001, pp. 169–171; Service 2003a, p. 44; Goldberg 2005, pp. 8, 9; Pratt and Pierce 2005, pp. 4–5, 11–12; Pratt 2005, p. 1; San Bernardino National Forest (SBNF) GIS database). The Bautista Road Occurrence Complex (described as non-core in the Recovery Plan) is in a relatively high-elevation valley east of Temecula and north of the community of Anza, California. Multiple new observations have occurred within and around the Bautista Road Occurrence Complex (AMEC 2004, p. 6; Mooney Jones and Stokes 2005, p. 10). Consistent with criteria outlined in the Recovery Plan (Service 2003a, p. 35) and above, we now consider the Bautista Road Occurrence Complex to be a Core Occurrence Complex.

From 2004 to 2006, multiple new occurrence locations were also reported in the community of Anza, and north and northwest of the Bautista Road Core Occurrence Complex, Pine Grove Non-core Occurrence Complex, and Lookout Mountain Non-core Occurrence Complex. These new Non-core Occurrence Complexes are: (1) Cave Rocks within the community of Anza, just north of the intersection of Bautista Road and State Route (SR) 371 (AMEC 2004, p. 9); (2) Quinn Flat located between Fobes Ranch Road and Morris Ranch Road northeast of Quinn Flat and SR 74 (Pratt and Pierce 2005, pp. 4–5, 11–12; Pratt 2005, p. 1; SBNF GIS database); (3) Horse Creek adjacent to Bautista Road, southeast of Bautista Spring (AMEC 2004, p. 6; Malisch 2006, p. 1); and (4) North Rouse Ridge located on Rouse Ridge in the hills east of Bautista Canyon, near where Bautista Road exits the foothills (Goldberg 2005, pp. 8, 9; SBNF GIS database ). None of these new observation locations met two or more of the criteria needed to categorize them as a core occurrence complex. However, these new Non-core Occurrence Complexes resulted in: (1) An increased number of known occupied areas near the community of Anza; (2) an expansion of the subspecies' known geographic range at its northeastern extreme (where it had not been previously recorded, but within historical latitudinal limits of the subspecies' distribution); and (3) an increase in the subspecies' known elevation range (Service Geographic Information Systems (GIS) database).

Recent monitoring information indicates the Tule Peak and Silverado Core Occurrence Complexes described in the Recovery Plan (Service 2003a, p. 44) are part of a single high-density population distribution supporting periodic density increases, similar to historical outbreak events (Service 2003a, p. 29), such as the 1977 outbreak in San Diego County reported by Murphy and White (1984, p. 351) (see also Ehrlich and Murphy 1987, p. 127; Carlsbad Fish and Wildlife Office (CFWO) 2004; Pratt 2004, p. 17). Occupancy in the Silverado Core Occurrence Complex was first documented in 1998 (Pratt 2001, p. 17), followed by the discovery of hundreds of Quino checkerspot adults in 2001 within the Tule Peak Core Occurrence Complex (TeraCor 2002, p. 14). Such reports of hundreds of adults in the Tule Peak Core Occurrence Complex were unprecedented since the 1970s, because, typically, five or fewer individuals are reported during project-based surveys (Service GIS database).

In 2004, following a year of above-average host plant density in the Anza area (CFWO 2004), another Quino checkerspot butterfly outbreak event occurred with even higher abundance than was reported in 2001. An estimated 500 to 1000 adult Quino checkerspot butterflies were reported from the Silverado Core Occurrence Complex in a single day in 2004 (Anderson 2007, p. 1; CFWO 2004; Pratt 2004, pp. 16, 17). Additionally, more than 30 new occurrence locations with high adult densities were reported in 2004 in the vicinity of Tule Peak Road (92 to more than 100 observations in a single day) south of the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California (Cahuilla Band of Indians), and the community of Anza (Osborne 2004, pp. 1–6, 8–10; Anderson 2007, p. 5; CFWO 2004; Osborne 2007, pp. 13–16). Based on these new observations, it is appropriate to merge the Tule Peak (core), Silverado (core), and Southwest Cahuilla (non-core) occurrence complexes to form a single, expanded Tule Peak/Silverado Core Occurrence Complex. This population contains higher densities and likely produces more emigrants than any other population within the subspecies' range.

The best available scientific data (including recent outbreaks in the closest core occurrence complex) suggest the new Bautista Road Core Occurrence Complex supports ongoing range shift for the Quino checkerspot butterfly upslope in elevation, and other non-core occurrence complexes north of the community of Anza may be the result of recent colonization events.

Parmesan (1996, pp. 765–766) concluded that the average (not actual) position of known Edith's checkerspot butterfly populations had shifted north and up in elevation, likely due to a warming, drying climate (conclusion supported by the technical recovery team, Service 2003a, pp. 64, 65). Parmesan (1996, pp. 765–766) compared the distribution of the Edith's checkerspot butterfly in the early part of the 20th century to its distribution from 1994 to 1996 using historical records and field surveys. This study identified a rangewide pattern of local Edith's checkerspot butterfly extirpations and noted that 80 percent of historically recorded populations in the southern part of the range were extinct at the time of the re-census in the mid-1990s (with the majority being Quino checkerspot butterfly populations). In contrast, historically recorded Edith's checkerspot butterfly populations in the mid-latitude part of the species' range experienced only 40 percent extirpations, and the extirpation rate in the northern part was as low as 20 percent (Parmesan 1996, pp. 765–766). Fewer than 15 percent of the Edith's checkerspot butterfly extirpations occurred in the highest elevation band (above 7,874 ft (2,400 m)) (Parmesan 1996, pp. 765–766).

Parmesan (1996, pp. 765–766) concluded that this pattern of extirpation indicates contraction of the southern boundary of the Quino checkerspot butterfly's overall distribution by almost 100 mi (160 km) and a shift in the average location of an Edith's checkerspot butterfly occurrence northward by 57 mi (92 km). A parallel elevation gradient in extirpations shifted the mean location of Edith's checkerspot butterfly populations upward by 407 ft (124 m). A breakpoint in the pattern of extirpations occurred at approximately 7,874 ft (2,400 m), with about 40 percent of all populations below the breakpoint recorded as extirpated in suitable habitats, while less than 15 percent were extirpated above the breakpoint. This pattern matched trends in snowpack dynamics in the Sierra Nevada (where the high-elevation populations are found) over the same period as the butterfly study, with significant trends toward lighter snowpack and earlier melt date below 7,874 ft (2400 m), and heavier snowpack and a (non-significant) trend toward later melt date above 7,874 ft (2400 m) (Johnson *et al.* 1999, pp. 63–70). This range shift closely matched shifts in mean yearly temperature (Parmesan 1996, pp. 765–766; Karl *et al.* 1996, pp. 279–292). Parmesan's study found extirpations to be most common at lower elevations and latitudes, and the Quino checkerspot butterfly's range includes both the lower elevation and lower latitude range extremes for Edith's checkerspot butterfly. Therefore, the Quino checkerspot butterfly may be the subspecies of Edith's checkerspot experiencing the greatest effects associated with changes in climate.

Studies have demonstrated a correlation of population distribution and phenology changes with climate change for many other butterfly and insect species in California and around the world (Parmesan *et al.* 1999, p. 580; Forister and Shapiro 2003, p. 1130; Parmesan and Yohe 2003, pp. 38, 39; Karban and Strauss 2004, pp. 251–254; Thomas *et al.* 2004, pp. 146–147; Osborne and Ballmer 2006, p. 1; Parmesan 2006, pp. 646–647; Thomas *et al.* 2006, pp. 415–416). Metapopulation viability analyses of other endangered nymphalid butterfly species indicate that current climate trends pose a major threat to butterfly metapopulations by reducing butterfly growth rates and increasing subpopulation extirpation rates (Schtickzelle and Baguette 2004, p. 277; Schtickzelle *et al.* 2005, p. 89). Most recently, Preston *et al.* (2008, p. 2506) incorporated biotic interactions into niche models to predict suitable habitat for species under the range of climate conditions predicted for southern California in recent climate change models (see also Hayhoe *et al.* 2004, pp. 12422–12427; IPCC 2007, p. 9).

Preston *et al.* (2008, p. 2508) found that Quino checkerspot butterfly habitat decreased and became fragmented under altered climate conditions based on the climate-only model. For increasing temperatures and 110 percent precipitation, there was a shift in habitat to the eastern portion of the currently occupied range corresponding with an upslope movement of the species to higher elevations in adjacent mountains (Preston *et al.* 2008, p. 2508). The abiotic–biotic model (better-performing model) predicted 98 to 100 percent loss of suitable Quino checkerspot butterfly habitat when the temperature increased 1.7 and 2.8 °C (1.5 and 2.5 °F) and when the precipitation was 50 percent or 150 percent of current levels (Preston *et al.* 2008, p. 2508). An increase of less than 1 °C (1.1 °F) with no change in current precipitation resulted in no predicted habitat shift, although there was an eastward (upslope) shift within the current distributional footprint at 110 percent precipitation (Preston *et al.* 2008, p. 2508). Similar climate response patterns in modeled habitat and related and co-occurring insect species further support the validity of Parmesan's (1996, pp. 765–766) Quino checkerspot butterfly observations and conclusions (Preston *et al.* 2008, pp. 2511, 2512). Therefore, the hypothesis of range shift driven by changing climate and precipitation patterns occurring in the foothills north of the community of Anza is well supported by the best available scientific information.

Documented environmental changes that have already occurred in California (Ehrlich and Murphy 1987, p. 124; Croke *et al.* 1998, pp. 2128, 2130; Davis *et al.* 2002, p. 820; Breshears *et al.* 2005, p. 15144), future drought predictions for the state (such as Field *et al.* 1999, pp. 8–10; Brunell and Anderson 2003, p. 21; Lenihen *et al.* 2003, p. 1667; Hayhoe *et al.* 2004, p. 12422; Breshears *et al.* 2005, p. 15144; Seager *et al.* 2007, p. 1181) and North America (IPCC 2007, p. 9), and extirpation of Edith's checkerspot butterfly populations following extreme climatic events (Ehrlich *et al.* 1980, pp. 101–105; Singer and Ehrlich 1979, pp. 53–60; Singer and Thomas 1996, pp. 9–39) model and predict that prolonged drought and other environmental changes related to changing climate patterns will continue into the near future, and these changes may affect Quino checkerspot butterfly populations. Thomas *et al.* (2004, p. 147) estimated that 29 percent of species in scrublands (habitat for the Quino checkerspot butterfly) face eventual extinction, and 7 (with dispersal) to 9 (without dispersal) percent of butterfly species in Mexico will become extinct (mid-range climate predictions; Thomas *et al.* 2004, p. 146). During drought conditions in 2007, surveyors noted that, for the first time since the subspecies was listed, no Quino checkerspot butterflies were observed during Riverside County surveys or core occurrence complex monitoring (CFWO 2007). Therefore, recent subspecies field evidence corresponds with the hypothesis that changing environmental conditions throughout the subspecies' range is resulting in reduced densities at lower elevations.

Maintenance of the Tule Peak/Silverado and Bautista Road core occurrence complexes and habitat connectivity to higher elevation non-core occurrence complexes is needed to prevent an increase in the subspecies' extinction probability and support range shift resulting from environmental changes due to changing climate patterns (Service 2003a, pp. 46, 47; Osborne 2007, pp. 9–10). The Anza/Mount San Jacinto foothills area (in and adjacent to the Bautista Road Core Occurrence Complex) is proximal to what is likely the highest density

population that produces the most emigrants within the subspecies' range (Tule Peak/Silverado Core Occurrence Complex) and supports the greatest elevation gradient within the extant range of the Quino checkerspot butterfly. Regardless of range-shift dynamics, this area likely supports the most resilient populations within the subspecies' current range (see above discussion of recent observations in this area). As discussed above, evidence of range shift resulting from environmental changes due to changing climate patterns includes the following: (1) Parmesan's (1996) subspecies-specific study; (2) Preston *et al.*'s (2008, pp. 2501–2505) subspecies-specific habitat model predictions; (3) recent documented Quino checkerspot butterfly outbreak events (discussed above); (4) the complete lack of Quino checkerspot butterfly observations in Riverside County during 2007 monitoring; (5) documented drought conditions and the likelihood that recurrent drought conditions will persist into the near future (see above discussion); and (6) the discovery of new non-core occurrence complexes in the most northern, highest elevation habitat areas (see above discussion of recent observations in this area). Parmesan's (1996, pp. 765–766) range-shift statistics and Preston *et al.*'s habitat models (2008, pp. 2501–2505) predict the following Quino checkerspot butterfly population changes: (1) Declines in, and loss of, the southernmost and lowest elevation populations (lowest elevation range edge already retracted likely due to a combination of development and the 1980s drought), especially in drier areas where rainfall is most variable (such as southwest Riverside County; Anderson 2000, pp. 3, 6); (2) increases in the density in the highest elevation populations, especially in wetter areas (such as the Anza area; Service 2003a, p. 44); and (3) establishment of new populations higher in elevation where range shift is least impeded by habitat loss due to land-use changes (such as the Mount San Jacinto foothills; Service GIS database and satellite imagery).

The highest elevation core occurrence complexes (Tule Peak/Silverado and Bautista Road) also support the highest (co-occurring) diversity of host plant species (*Plantago patagonica*, *Antirrhinum coulterianum*, *Collinsia concolor*, *Cordylanthus rigidus* (rigid bird's beak), and *Castilleja exserta* (purple owl's-clover)) within the range of the Quino checkerspot butterfly, a factor known to increase population resilience (Service 2003a, p. 17) and mitigate the effects of climate extremes on Edith's checkerspot butterfly populations (Hellman 2002, p. 925). Therefore, prudent design of reserves and other managed habitats near the community of Anza, where the subspecies' range is likely expanding upslope in elevation, should include landscape connectivity to other habitat patches and ecological connectivity (habitat patches linked by dispersal areas; Service 2003a, p. 162) to accommodate such range shift (Service 2003a, p. 64).

Status and Local Distribution of Populations in San Diego County

New Quino checkerspot butterfly observations (Service GIS database) between occurrence complexes identified in the Recovery Plan have resulted in merging of the Otay Valley (core), West Otay Mountain (core), Otay Lakes (core), Proctor Valley (non-core), Dulzura (non-core), and Honey Springs (non-core) occurrence complexes into a single, expanded Otay Mountain Core Occurrence Complex. This merging of occurrence complexes in the Otay area was anticipated in the Recovery Plan, as authors noted that occupied habitat in the vicinity of Otay Lakes and Rancho Jamul appeared to be an area of key landscape connectivity for all subpopulations in southwest San Diego County (Service 2003a, pp. 53, 54).

Several widely distributed new observation locations have been reported since 2002 in central San Diego County (Dudek 2005, p. 1; Faulkner 2005, p. 1; Tierra Environmental Services 2005, p. 4), and between Interstate 8 and State Route 94 (TRC 2008, pp. 33–38) resulting in four new San Diego County non-core occurrence complexes (Fanita Ranch, Sycamore Canyon, and Mission Trails Park, and Barrett Lake). The proximity of these occurrence complexes to historical collection locations (compare above-cited documents to Service 2003a, p. 3) indicates recent detections may reflect short-term increases in population densities; however, it is not likely that increasing densities will persist, given observed and predicted environmental shifts associated with changing climate patterns (see above discussion), increasing nonnative plant invasion, and the relative isolation of these non-core occurrence complexes from core occurrence complexes. Therefore, the best available data indicate that these new observation locations may be the result of surveys in areas not previously searched and likely represent residual, relatively low-density populations experiencing a long-term trend of decreasing abundance.

Multiple new Quino checkerspot butterfly observation locations have been reported in south-central San Diego County since 2002 east of the community of Campo (Dicus 2005a, pp. 1–2; b, p. 1; PSBS 2005a, p. 18; 2005b, p. 26; O'Conner 2006, pp. 2–4). This cluster of occurrence complexes near Campo is over 7 mi (11 km) from the closest previously identified core occurrence complex near the community of Jacumba (Service 2003a, p. 52; Service GIS satellite imagery and database) and over 12 mi (19 km) from the Tecate (non-core) Occurrence Complex (Service 2003a, p. 47; Service GIS satellite imagery and database). We believe the Quino checkerspot butterfly distribution east of the community of Campo is under-documented because of: (1) The small number of surveys conducted in this area (Service survey report files); (2) the existence of contiguous habitat between observation locations (Service GIS vegetation database and satellite imagery); and (3) the presence of relatively high densities of *Antirrhinum coulterianum* and *Collinsia cocolor* host plants in occupied habitat (Bureau of Indian Affairs 1992, p. c–5; Allen and Kurnow 2005, pp. 10, 13–16; Dicus 2005a, pp. 1–2; b, p. 1; PSBS 2005a, p. 18; 2005b, p. 26; O'Conner 2006, pp. 1–4, Science Applications International Corporation 2006, pp. 33, 34, 37).

Methods used in the Recovery Plan (Service 2003a, p. 35) to determine membership of occurrence locations in an occurrence complex using the sparse available occurrence data would likely underestimate the population distribution associated with this obviously independent population near the communities of La Posta and Campo. Therefore, although not quite proximal enough to be considered a single occurrence complex based on overlapping 0.6-mi (1-km) movement distances (Service 2003a, p. 35), we consider this cluster of new observations near Campo to belong to a single new La Posta/Campo Core Occurrence Complex.

Quino checkerspot butterflies were recently observed in a new location in southeast San Diego County that resulted in expansion of the Jacumba Occurrence Complex (Essex and Osborne 2005, p. 82). Additionally, data collected from the Jacumba Occurrence Complex since publication of the Recovery Plan led us to reclassify the Jacumba complex as a core occurrence complex. The Jacumba Occurrence Complex was not classified as a core occurrence complex in the Recovery Plan (Service 2003a, p. 52) due to its relatively small geographic size.

However, adult Quino checkerspot butterflies are consistently observed in the area, even during drought years and under difficult survey conditions (high winds) (CFWO 2002–2007; Klein 2007, p. 1). An estimated 50 individuals were observed in a single day near Jacumba Peak (Pratt 2007b, p. 1). Furthermore, reproduction was documented in the Jacumba Occurrence Complex in 1998 and again in 2004 (Pratt 2007c, p. 1). Therefore, given ongoing documentation of occupancy (Service 2004, 2005, 2008), documented reproduction over multiple years (Pratt 2007c, p. 1), reported observations of large numbers of individuals (50; Pratt 2007b, p. 1), and an increased occurrence complex area (approximately 522 ac (1,290 ha)), we now consider the Jacumba Occurrence Complex to be a core occurrence complex associated with what appears to be a relatively resilient population.

The prediction that drought conditions are likely to continue into the near future (Service 2003a, pp. 63, 64; see above discussion) highlights the importance of conserving populations locally adapted to drier climates and diverse habitat types (Service 2003a, p. 76). The La Posta/Campo and Jacumba core occurrence complex habitats are warmer and drier than the Otay Mountain Core Occurrence Complex and differ substantially in other habitat characteristics (Service 2003a, pp. 36–54; O'Conner 2006, p. 4). Therefore, maintenance of these core occurrence complexes is essential for recovery and survival of the Quino checkerspot butterfly in San Diego County. These new core occurrence complexes were also the only complexes in the subspecies' southern range not affected by the 2003 and 2005 fires. Therefore, new information indicates the La Posta/Campo and Jacumba Core Occurrence Complexes contribute significantly to reducing the subspecies' extinction probability.

**Previous Federal Actions**

The Homebuilders Association of Northern California, *et al.*, filed suit against the Service in March 2005 challenging the merits of the final critical habitat designations for several taxonomic entities, including the Quino checkerspot butterfly. A settlement was reached in March 2006 that required the Service to re-evaluate five final critical habitat designations, including the Quino checkerspot butterfly. The settlement stipulated that proposed revisions to the Quino checkerspot butterfly designation would be submitted for publication to the **Federal Register** by December 7, 2007, and final revisions would be submitted by December 7, 2008. In accordance with a court-approved amendment to the settlement agreement, dated December 5, 2007, the proposed revisions were published in the **Federal Register** on January 17, 2008 (73 FR 3328). Subsequently, a court-approved amendment to the settlement agreement dated November 6, 2008, stipulated the Service deliver the final revised critical habitat designation to the **Federal Register** by June 6, 2009. For more information on previous Federal actions concerning the Quino checkerspot butterfly, refer to the proposed revisions to critical habitat published in the **Federal Register** on January 17, 2008 (73 FR 3328).

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed rule to revise critical habitat for the Quino checkerspot butterfly during two comment periods. The first comment period opened with the publication of the proposed rule in the **Federal Register** on January 17, 2008 (73 FR 3328), and closed on March 17, 2008. The second comment period opened with the publication of the notice of availability of the Draft Economic Analysis (DEA) in the **Federal Register** on December 19, 2008 (73 FR 77568) and closed on January 20, 2009. During both public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to revise critical habitat for this subspecies and the associated DEA. During the comment periods, we requested all interested parties submit comments or information related to the proposed revisions to critical habitat, including (but not limited to) the following: unit boundaries; species occurrence information and distribution; land use designations that may affect critical habitat; potential economic effects of the proposed designation; benefits associated with critical habitat designation; areas proposed for designation and associated rationale for the non-inclusion or considered exclusion of these areas; and methods used to designate critical habitat.

During the first comment period, we received 17 comment letters (15 letters addressing the proposed revision of critical habitat, and 2 letters from a single commenter that were not related to proposed revisions to critical habitat): two from peer reviewers, three from Federal agencies, six from representatives of five Native American tribes, and six from public organizations or individuals. During the second comment period, we received nine comments addressing the proposed critical habitat designation and the DEA. Of these latter comments, two were from peer reviewers, two from Federal agencies, two from Native American tribes, and three from public organizations or individuals. We did not receive any requests for a public hearing.

*Peer Review*

In accordance with our Policy for Peer Review in Endangered Species Act Activities, published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 10 knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which it occurs, and conservation biology principles. Four peer reviewers submitted responses. They provided additional information, clarifications, and suggestions that we incorporated into the rule to improve the final revised critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for the Quino checkerspot butterfly. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

*Peer Reviewer Comments*

*Comment 1*: One peer reviewer stated they had recently communicated with residents in and around the community of Anza and concluded that residents moved to this area based on an appreciation of nature and the outdoors. The peer reviewer suggested the Service should inform residents on how to improve Quino checkerspot butterfly habitat. The peer reviewer also asserted that residents of Anza are suspicious of government intervention and value their personal freedom more than endangered species preservation. The peer reviewer expressed willingness to help organize a meeting that would provide private landowners from Anza with information on how to preserve the subspecies. The peer reviewer concluded that, because of their appreciation for nature, Anza residents would be willing to improve Quino checkerspot butterfly habitat on their lands, but that willingness would be decreased by critical habitat designation; therefore, we should exclude any lands in the vicinity of Anza from our revised critical habitat designation.

*Our Response*: We agree that species conservation benefits provided by landowner partnerships to conserve federally listed species may minimize the conservation benefits of designating privately owned lands as critical habitat, and we appreciate the peer reviewer's interest in participating in such an endeavor. We encourage the peer reviewer to continue to communicate and work with residents of Anza (Units 6 and 7) to conserve the Quino checkerspot butterfly, within and outside of areas that meet the definition of critical habitat. Should residents of Anza or surrounding areas be interested in developing a partnership to conserve the Quino checkerspot butterfly, Service biologists are available to participate and provide information on such partnership programs as Safe Harbor Agreements for private landowners. Safe Harbor Agreements provide assurances to landowners under the Act that no additional future regulatory restrictions will be imposed if conservation practices on their land attract or perpetuate federally listed species. At this time, there is no formal partnership between the peer reviewer, residents of Anza, or the Service to conserve the Quino checkerspot butterfly or its habitat, other than the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP; Dudek and Associates, Inc. 2003), under which some areas south of the community of Anza are already excluded (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Comment 2*: One peer reviewer observed Quino checkerspot butterflies ''by the 100s'' near the community of Anza during a subspecies ''outbreak.'' The peer reviewer observed several unique behaviors in the Anza area in 2004 (they stated 2006 but our records indicate 2004), including a female deep within a stand of *Adenostoma sparsifolium* (redshank), likely searching for sites to deposit eggs. Despite extensive survey efforts prior to this 2004 observation, the peer reviewer had never observed Quino checkerspot butterflies in dense *A. sparsifolium*, and previously assumed the subspecies never went into such areas.

The peer reviewer asserted that Quino checkerspot butterflies move many more miles during periods of high subspecies density than observed during average density years. The peer reviewer hypothesized that, under certain environmental conditions, hormonal changes could be responsible for the behavioral changes he observed. The peer reviewer also noted that, during historical ''outbreaks,'' Quino checkerspot butterflies were observed in downtown San Diego. The peer reviewer hypothesized this movement behavior may be unique to the Quino checkerspot butterfly among Edith's checkerspot subspecies, and movement between populations may be important for replacing extirpated populations and maintaining gene flow between extant populations. Finally, the peer reviewer stated a lack of conserved ''intermediate habitat'' between populations may cause extirpation of populations and, eventually, subspecies extinction.

*Our Response*: We were aware of the peer reviewers' observations and had incorporated those observations into our analysis (for example, inclusion of closed-woody canopy areas in Primary Constituent Element (PCE) 2; see ''Primary Constituent Elements'' section below). We appreciate the peer reviewers' insights and contributions to our knowledge of the subspecies' biology.

Although we are not aware of any recorded long-distance movements for the Quino checkerspot butterfly, the one within-habitat patch movement study completed at Otay Lakes (White and Levin 1981, pp. 350, 355) concluded that Quino checkerspot butterflies were ''less sedentary'' than bay checkerspot butterflies and may disperse greater distances. Plasticity and variability of movement behavior is typical among *Euphydryas* spp. (Service 2003a, pp. 10–13), as demonstrated by the historical observations of Quino checkerspot butterflies in downtown San Diego that were cited by the peer reviewer. These observations indicate that, when many individuals were dispersing during at least one unusually high-density historical event, developed areas did not prevent such movement. Therefore, because the best available scientific information supports the need for within-population movement areas, but does not support the necessity or identification of ''intermediate habitat'' for dispersal between populations, we included only movement areas within habitat-based population distributions in our critical habitat designation (see ''Criteria Used To Identify Critical Habitat'' section below).

*Comment 3*: Based on personal experience maintaining captive populations, the peer reviewer asserted that Quino checkerspot butterfly populations are more susceptible to inbreeding depression than most other butterfly species. The peer reviewer stated that, when closely related Quino checkerspot butterfly individuals are bred ''for some time'' without out-crossing, they observe greater egg and larval mortality than generally observed in butterfly species in the family Lycaenidae (coppers and blues). The peer reviewer concluded the Service should consider assisting genetic exchange between populations that appear to be losing genetic variability, such as the small population in Unit 1 (Warm Springs Creek Core Occurrence Complex). The peer reviewer stated they suspected low genetic diversity was a primary cause of the Gavilan Hills/Lake Mathews population extirpation.

*Our Response*: We recognize that the increased mortality observed during captive rearing could be indicative of inbreeding depression; however, we have no basis upon which to determine whether or not populations of the Quino checkerspot butterfly outside of a laboratory setting experience inbreeding depression. We agree with the commenter's recommendation that an evaluation of the population genetics of this butterfly could assist its recovery, and we discussed the possible effects of genetic drift and inbreeding depression in the listing rule for the Quino checkerspot butterfly (Service 1997, pp. 2319–2320). We appreciate this information; however, we do not believe it is relevant to our final revised critical habitat designation.

*Comment 4*: One peer reviewer stated that populations in Units 6 and 7 near the community of Anza are ''continuous and not actually separate.'' The peer reviewer indicated that extensive suitable habitat exists between these two units (especially in Terwilliger Valley), which is probably occupied by the Quino checkerspot butterfly. Additionally, the peer reviewer noted there are multiple public land parcels in the area and some have extensive stands of the food plant *Antirrhinum coulterianum*.

*Our Response*: While landscape connectivity does exist between Units 6 and 7 in the Anza area, and some occupied habitat exists in the area that was not included in our proposed revised critical habitat units (Cave Rocks and Cahuilla Creek non-core occurrence complexes), habitat within the community of Anza is fragmented, and large areas of landscape connectivity occur outside our mapped habitat-based population distributions (that is, not occupied). Our habitat-based population distributions are the best estimate of population occupancy based on the best available scientific data. Because the habitat-based population distributions are not continuous, we must assume the Bautista Road and Tule Peak/Silverado core occurrence complexes and the Cave Rocks and Cahuilla Creek non-core

occurrence complexes are not part of a single population. We determined that habitat captured by the core occurrence complex habitat-based population distributions in Units 6 and 7 provide the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. Our criteria used to identify critical habitat focused on core occurrence complex habitat-based population distributions designed to capture all habitats likely to support resilient metapopulations, including those likely to support local source or mainland populations (also called subpopulations) and movement areas between habitat patches required for metapopulation resilience (see Service 2003a pp. 163, 165–166 for term definitions). Finally, Terwilliger Valley is not located between Units 6 and 7, it is located east of Unit 6 (Unit 7 is north). Please see ''Criteria Used To Identify Critical Habitat'' section below for further discussion.

*Comment 5*: Two peer reviewers stated the Bautista Road Core Occurrence Complex was probably occupied at the time of listing, but occupancy was not documented because that area was not adequately surveyed at that time. The second peer reviewer asserted that, prior to 1998, butterfly experts did not know much about habitats near the community of Anza, and all high-elevation observations were thought to be dispersing individuals because the only known primary host plant, *Plantago erecta,* did not occur above 3,000 ft (914 m) in elevation. The second peer reviewer noted that Dr. John Emmel observed a Quino checkerspot butterfly [near the community of Anza] along Bautista Road in the 1970s. The second peer reviewer also suggested that surveys be conducted in higher elevation areas where the Quino checkerspot butterfly may eventually colonize to determine if the subspecies is absent and to document possible establishment of new populations in the future. Finally, the second peer reviewer asserted that movement of this subspecies into new areas will not be easy because of inbreeding depression (see Comment 3 above), and suggested the subspecies may move by local and gradual movements and eventually expand into higher elevation sites.

*Our Response*: We agree that it is possible that the Bautista Road Core Occurrence Complex was occupied at the time of listing; however, we have insufficient documentation to support that assertion. We received subsequent confirmation of Dr. Emmel's historical Quino checkerspot butterfly observation referenced by the peer reviewer. Dr. Emmel (2008, p. 1) stated that, on March 26, 1988, he observed what appeared to be a single female Quino checkerspot butterfly at the intersection of Bautista Road and Tripp Flats Road at 3,840 ft (1,170 m) elevation. Dr. Emmel (2008, p. 1) further stated that this historical observation within the Bautista Road Core Occurrence Complex may have been of a dispersing individual from a more southern population, and the subspecies may have almost exclusively used *Plantago* spp. in the 1970s and 1980s. Therefore, we are uncertain when the Bautista Road Core Occurrence Complex was initially colonized; however (as stated above in the ''**Background**'' section), we believe it currently provides colonists to higher elevations and, through this mechanism, likely facilitates range shift resulting from environmental changes that degrade suitable habitat conditions.

Inbreeding depression may slow colonization of new areas. However, when gene flow is restricted (for example, by mountainous terrain; Service 2003a, p. 13), local adaptation can occur quickly because peripheral populations are not swamped by genes adapted to environmental conditions specific to the range core (Zakharov and Hellman 2008, p. 199). Higher rates of local adaptation at a species' range edge may counteract any negative effects of inbreeding depression on colonization rate. Therefore, we did not base any of our conclusions on the hypothesis that inbreeding depression slows colonization of new areas in this subspecies.

*Comment 6*: One peer reviewer asserted the use of host plant species other than *Plantago* spp. and *Antirrhinum coulterianum* in Riverside County should be investigated before assuming they are not used. The peer reviewer stated that the western San Diego County populations may also use many undocumented host plants, including *Castilleja affinis* (coast Indian paintbrush), *Castilleja foliolosa* (woolly paintbrush), *Collinsia heterophylla*, and *Antirrhinum nuttallianum* (Nuttall's snapdragon).

Finally, the peer reviewer expressed the opinion that *Penstemon centranthifolius* (scarlet bugler) may also be an important Quino checkerspot host plant near the community of Anza. The peer reviewer stated that they observed Quino checkerspot butterflies in early spring near the community of Anza and that subspecies' presence appears to be positively correlated with relatively heavy feeding damage on *P. centranthifolius* by an as-yet-undetected herbivore. The peer reviewer hypothesized the feeding damage on *P. centranthifolius* could be caused by late-instar Quino checkerspot butterfly larvae because they had difficulty detecting Quino checkerspot butterfly larvae on host plants other than *Plantago* spp. The peer reviewer concluded that *P. centranthifolius* might be important for post-diapause larval feeding because it is the only potential host plant species available for adult egg deposition and post-diapause larval feeding during periods of drought. Therefore, the peer reviewer believes *P. centranthifolius* may be an important food source for the Quino checkerspot butterfly larvae in high-elevation sites during drought.

*Our Response*: We agree the Quino checkerspot butterfly may use different host plant species across its range. We provided a list of all host plant species where egg deposition has been documented in our ''Primary Constituent Elements'' section below, including *Collinsia concolor*, documented in 2008 to be used in the field by the Quino checkerspot. We appreciate information on potential use of *Penstemon centranthifolius* as a host plant; however, Quino checkerspot butterfly use of this potential hostplant species has not been documented, and any related changes to this final revised critical habitat designation would not be appropriate.

*Comment 7*: One peer reviewer noted that, based on his experience, *Eriodictyon* spp. (yerba santa), *Chaenactis glabriuscula* (pinchusion flower), and *Ericameria linearifolia* (narrowleaf goldenbush) are important nectar sources for Quino checkerspot butterfly survival. The peer reviewer stated some of the nectar sources on page 3335 of the proposed revised critical habitat rule (73 FR 3328; January 17, 2008) are not important because they are rarely visited by females and, therefore, do not contribute to increased production of eggs or subspecies survival.

*Our Response*: We appreciate this information based on the peer reviewer's experience and have revised our list of nectar source examples in the PCEs to include the species named by the peer reviewer. The peer reviewer did not specify which nectar sources on the existing PCE list they did not believe were important. Our list of nectar sources is not exhaustive, and nectar source importance can be site specific. Therefore, we believe our current PCE nectar source list is appropriate (see ''Primary Constituent Elements'' section below).

*Comment 8*: One peer reviewer stated that overcollection did not play a role in

the loss of Quino checkerspot butterfly populations.

*Our Response*: The listing rule (62 FR 2313; January 16, 1997) identified over-collection as a threat to the Quino checkerspot butterfly. The Service has initiated a 5–year review on this subspecies and is re-evaluating the magnitude and extent of all threats. We appreciate this information; however, we do not believe it is relevant to our final revised critical habitat designation.

*Comment 9*: One peer reviewer stated that they believe all areas containing low shrubs should be included in the PCEs because diapause constitutes the majority of the Quino checkerspot butterfly's annual life cycle, and larvae diapause in low shrubs such as *Eriogonum fasciculatum* (California buckwheat).

*Our Response*: This critical habitat designation includes all habitat-based population distributions associated with core occurrence complexes (see ''Criteria Used To Identify Critical Habitat'' section below), and the PCEs include all vegetation with an open woody canopy, including shrublands (see ''Primary Constituent Elements'' section below). Therefore, habitat containing low shrubs essential to the conservation of the subspecies, such as *Eriogonum fasciculatum*, is included in this final revised critical habitat designation.

*Comment 10*: One peer reviewer maintained that the availability of prominent hilltops should be ''weighed carefully in any decision relating to the possible exclusion of critical habitat and associated conservation plans'' because the loss of such courtship areas could result in the loss of populations even if other PCEs are present in designated critical habitat.

*Our Response*: This peer reviewer is apparently concerned that exclusion of areas from critical habitat will result in the loss of the excluded habitat, especially habitat containing hilltops. Section 4(b)(2) of the Act authorizes the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of designating a particular area as critical habitat, unless the failure to designate will result in the extinction of the species. We believe the exclusions made in this final revised rule are legally supported under section 4(b)(2) of the Act and scientifically justified. The peer reviewer specifically commented on exclusions where conservation plans are in place. Areas excluded under section 4(b)(2) based on completed habitat conservation plans (HCPs) or other Service-approved management plans receive long-term protection and conservation; therefore, areas excluded from critical habitat designation should not result in the loss of the excluded habitat,. As discussed below, we fully considered and weighed the benefits to the conservation of the subspecies from including the specific areas we determined contain the physical and biological features essential to the conservation of the Quino checkerspot butterfly (including prominent hilltops used for mating) within the habitat conservation plan areas, in light of our determination that these areas will be adequately protected on lands covered by the Western Riverside County MSHCP and the San Diego County Multiple Species Conservation Program (MSCP), City of Chula Vista Subarea Plan (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Comment 11*: One peer reviewer stated, ''Although annual surveys for the presence of [Quino checkerspot] butterfly adults are important * * * a population can be represented for several consecutive bad years by diapausing larval clusters that have been shown to survive for at least 4 years.'' The peer reviewer added that other butterfly and moth species have adapted to drought conditions in the western United States and are capable of diapausing for up to 30 years.

*Our Response*: We are aware Quino checkerspot butterflies can diapause for multiple years (Service 2003a, pp. 8–9), and under extreme drought conditions, no larvae in a surveyed area may have metamorphosed into adults. We are also aware that captive rearing and observations of the Quino checkerspot butterfly larvae indicate that repeated diapause is relatively common (over 50 percent likelihood for the first year; Pratt 2006, p. 10). Larvae can re-enter diapause up to three times (four diapause periods), but more than three diapause periods during an individual's lifespan is unusual (Pratt 2007a, pp. 10–13). Captive-rearing and field data indicate that larvae typically undergo extended diapause when environmental conditions are not favorable for growth (Pratt 2007a, pp. 10–13). Negative surveys are not considered credible if unfavorable weather, such as drought, limits Quino checkerspot butterfly detectability (Service 2002, p. 6). Therefore, we have confidence in the quality of surveys conducted by individuals with recovery permits under section 10 (a)(1)(A) of the Act and the relative rarity of spurious results. We did not base any of our criteria on negative surveys, and included contiguous habitat within 1.2 mi (2 km) of all documented observations within a core occurrence complex (see ''Criteria Used To Identify Critical Habitat'' section below), therefore we believe the apparent concerns of this peer reviewer have been adequately addressed in this rule.

*Comment 12*: One peer reviewer suggested the analysis of Quino checkerspot butterfly nectar resources in the proposed revisions to critical habitat was not sufficient. The peer reviewer maintained that nectar plant availability can vary to a large degree among occupied areas, and the relative importance of nectar plant species will change over the flight period of the butterfly and from year-to-year. The peer reviewer emphasized that it is important to consider the contribution of nectar to increased female longevity and egg production.

*Our Response*: We agree that a more detailed nectar-resource-needs analysis would be desirable. However, we are not aware of any quantitative nectar-use data specific to the Quino checkerspot butterfly that would further inform our analysis. Consequently, we determined that the peer-reviewed scientific publications that characterize Quino checkerspot butterfly nectar resources are the best scientific and commercial information available. Furthermore, variability in nectar source availability is not relevant to this final revised critical habitat designation because the PCE description relevant to nectar resources is not dependent on temporal variability (for example, many herbaceous plants are not detectable or identifiable during the fall or winter seasons).

*Comment 13*: One peer reviewer (A) asserted that, although climate change may affect insect distributions globally, the hypothesis that it is affecting the Quino checkerspot butterfly is not supported by ''sound'' biological evidence. Peer reviewer A recommended removing the climate change discussion to save taxpayer dollars, suggesting that this modification would not affect the proposed or final revised critical habitat designation. Peer reviewer A further asserted that our suggestion that the newly identified colonies of Quino checkerspot butterflies (unspecified location, presumed north of the community of Anza) are a result of climate change is speculative. Peer reviewer A noted that Parmesan's (1996)

study did not find new northern or higher elevation populations. Additionally, the peer reviewer claimed Parmesan's (1996) range shift results were a ''statistical artifact'' of the apparent loss of low-lying southern populations, and that her negative occupancy data might have been the result of surveys conducted during ''bad'' years when all individuals were diapausing larvae.

Conversely, two other peer reviewers (B and C) expressed support for use of evidence and predictions of range shift resulting from environmental changes due to changing climate patterns to determine what lands meet the definition of critical habitat. Peer reviewer B noted that Quino checkerspot butterfly populations show dramatic changes in abundance from year to year, including responses to yearly patterns of precipitation and temperature. Peer reviewers B and C noted that, because the Edith's checkerspot species is known to respond strongly to climate, the species would also be expected to respond to climate change. Peer reviewer B further stated there is no reason to expect the Quino checkerspot butterfly to respond to ongoing climate change differently from other insects, and every reason to expect it to respond similarly to other climate-sensitive species. Peer reviewer C stated specifically, ''The summary of likely impacts of climate change for the near and long-term future of the Quino checkerspot butterfly (largely on page 3332 [of the proposed revised rule]) is well thought out. I fully agree with the recommendations outlined for revision and expansion of protected areas. The recommendations represent a rational adaptation plan to allow the Quino checkerspot butterfly to persist in the face of on-going climate change which is affecting habitat suitability in the region.'' Peer reviewer C further stated that shifts upslope in elevation are more probable than latitudinal shifts because the Quino checkerspot butterfly's historical range was bounded on the northern and eastern sides by desert habitat, and elevation shifts require less adaptation than latitudinal shifts.

Peer reviewer C described two possible drivers of the Quino checkerspot butterfly's upslope range shift: (1) The main host plant species may shift upslope; or (2) the subspecies could switch to other host plant species occurring higher in elevation as that habitat becomes more suitable with climate change. They noted that rapid evolution toward use of novel hosts was documented for several subspecies of Edith's checkerspot. Both peer reviewers argued that new scientific information (citing several sources) has further supported Parmesan's (1996) conclusion that the range of Edith's checkerspot butterfly has retracted at lower elevations and more southern latitudes, and is likely expanding at higher elevations and more northern latitudes.

*Our Response*: As detailed below, we agree with the opinions of peer reviewers B and C. We agree with peer reviewer A that removing the issue of climate change would not affect the proposed or final revised critical habitat designation; however, we do not agree it is not a relevant criterion for inclusion in critical habitat (see ''Criteria Used To Identify Critical Habitat'' section below). Unit 7 is designed to capture the habitat occupied by the Quino checkerspot butterfly population that is likely one of the two most resilient in existence, and also most likely to provide colonists to higher elevation habitat in the process of range shift resulting from environmental changes due to changing climate patterns (See ''**Background**'' section above and ''Criteria Used To Identify Critical Habitat'' section below).

Furthermore, in response to Peer Reviewer A's concerns, we acknowledge that inherent uncertainty exists in all conclusions drawn exclusively from correlative ecological field studies and qualitative observations (Peet 1991, p. 605). Nonetheless, case studies in complex natural systems are a foundation of ecological science, and conclusions should be drawn from generalizations based on comparison of other systems and as much specific local information as possible (Peet 1991, p. 605). Within the context of this critical habitat designation, we considered all available data concerning the likelihood of elevation range shift in the Quino checkerspot butterfly including: (1) Well-documented loss of lower-elevation populations occurring in this species (Edith's checkerspot) rangewide, and upslope elevation range-shifts (including new higher-elevation populations) in related butterfly species around the world (Parmesan *et al.* 1999 pp. 579–583; Parmesan and Yohe 2003, pp. 37–42; Parmesan 2006, pp. 648–649); (2) significantly earlier butterfly species emergence times (Parmesan 2007, p. 1860, 1864); (3) widening phenological asynchrony between butterfly maturation and host plant availability (Parmesan 2007; pp. 1860, 1864, 1868, 1870); and (4) habitat-based model predictions of pronounced future upslope subspecies range shift resulting from environmental changes due to changing climate patterns (Preston *et al.* 2008, p. 2508). The best available scientific data indicate that the Quino checkerspot butterfly is undergoing range shift and inclusion of unoccupied habitat and non-core occurrence complexes in Unit 7 encompasses habitat that is essential for the conservation of the species in light of this documented range shift regardless of causation or correlation. However, our interpretation of the data documenting and supporting apparent range shift in the Quino checkerspot butterfly is associated with environmental changes due to changing climate patterns.

We acknowledge that Parmesan's (1996, pp. 765–766) study was restricted to known historical occupancy locations and, as a result, did not document any new higher elevation populations. However, we are not aware of any peer-reviewed or other data contradicting Parmesan's (1996) upslope range shift conclusions, and the conclusions are supported by the findings of Preston *et al.* (2008, p. 2512). The peer-reviewed scientific publications and original data we relied on in this critical habitat designation for the Quino checkerspot butterfly constitute the best available scientific or commercial data.

Recent qualitative field observations of the Quino checkerspot butterfly further support the reality of range shift associated with environmental changes due to changing climate patterns. These observations include: (1) Multiple habitat-occupancy documentations at new elevation records; (2) new early emergence records indicating an extended breeding period at higher elevations; (3) higher abundance in populations on the edge of the subspecies' upper elevational range relative to lower elevations; and (4) use of a likely novel host plant species, *Collinsia concolor,* growing in cooler, wetter micro-habitats than known preferred host plant species (see ''**Background**'' section above). Although new occupancy sites have also been reported at intermediate elevations, these areas were more likely to have been extirpated by the 1980s drought (and subsequently recolonized) than habitats above the subspecies' known elevation range where higher average precipitation and cooler temperatures would have made habitat more suitable. Intermediate elevation sites were also already within the subspecies' known range and, therefore, more likely to have been occupied in the past. Lepidopterists have been searching for Quino checkerspot butterflies where *C. concolor* occurs for as long as they have been collecting butterflies. *C. concolor* is common in most habitats occupied by the butterfly (see ''**Background**'' section above); however, no lepidopterists had

documented use of this plant by the butterfly prior to 2008. Furthermore, Dr. Gordon Pratt has been personally searching for Quino checkerspot butterfly larvae on *C. concolor* at the microhabitat scale for approximately 10 years, since 1999 or earlier (Pratt 2001; pp. 34–43, 60–61), but 2008 was the first time he was able to document use by the subspecies; therefore, it is likely this host plant was not used historically.

In summary, while acknowledging some inherent uncertainty, we believe our conclusion—that newly identified high-elevation occurrence complexes (such as Quinn Flats Non-core Occurrence Complex) are likely a result of range shift associated with environmental changes due to changing climate patterns—is based on sound scientific information. We agree with the opinion of peer reviewers B and C that our use of evidence and predictions of climate change-driven range shift in determining what lands meet the definition of critical habitat is valid. The data documenting and supporting apparent range shift in the Quino checkerspot butterfly support our inclusion of unoccupied habitat adjacent to known occupied habitat and non-core occurrence complexes in Unit 7 as essential for the conservation of this subspecies.

*Comment 14*: One peer reviewer stated that our conclusion that observations in central San Diego County represent residual low-density populations with decreasing abundance is speculative. The peer reviewer maintained that the importance of these populations cannot be assessed without knowing the status of possible diapausing larval clusters in the area.

*Our Response*: We did not conclude in the proposed revised rule that Quino checkerspot butterfly observations in central San Diego County represent residual low-density populations with decreasing abundance; we stated, ''we cannot determine whether these new non-core occurrence complexes represent: (1) Residual, low-density populations decreasing in abundance; (2) resilient, low-density populations increasing in abundance; or (3) recent colonization events.'' We then specified the most likely status is residual, low-density populations decreasing in abundance. These statements do not address apparent short-term abundance or presence trends attributable to diapausing larvae that cannot be detected. Therefore, we edited the ''**Background**'' section of this final rule to specify that observations in central San Diego County likely represent a long-term (not short-term) decreasing abundance trend.

Assessment of populations using direct detection of diapausing larvae is not possible. Although a preliminary study of diapause site preference was recently undertaken (Pratt 2006, pp. 1–11), field surveys for diapausing larvae are not feasible given the current biological knowledge of the subspecies.

*Comment 15*: One peer reviewer (A) expressed concern that heavy use of metapopulation terminology in the proposed rule may be confusing to members of the public. Additionally, the peer reviewer said that it would be valuable to think of Quino checkerspot butterfly populations as actual populations with mostly diapausing larval clusters waiting for a good year, rather than what the peer reviewer interprets the Service describing as a hypothetical [meta]population model involving periodic extirpation of local populations. Conversely, two other peer reviewers (B and C) expressed support for the use of metapopulation ecology as a basis for determining what lands meet the definition of critical habitat. Peer reviewer A pointed out that relatively isolated habitat patches have a much lower conservation value because natural extinctions there are not likely to be ''rescued'' by natural recolonization. Peer reviewer A stated metapopulation ecology applies to the subfamily to which the Quino checkerspot butterfly belongs (Melitaeine butterflies) and to the subspecies, citing numerous peer-reviewed, published studies of related species. Peer reviewer A emphasized that, in the absence of direct studies of population structure in this subspecies, it would be unwise to assume metapopulation ecology does not apply to the Quino checkerspot butterfly. Peer reviewer C agreed that scientific evidence supports the conclusions that the structure of Quino checkerspot butterfly habitat is inherently patchy, and the Quino checkerspot butterfly has a slightly higher typical dispersal distance than its close relative, the bay checkerspot (*Euphydryas editha bayensis*); both are indicators of metapopulation structure.

*Our Response*: We appreciate the peer reviewer's concern that use of scientific terminology associated with complex population models can be confusing. As a result, we tried to minimize the use of scientific terminology and simplified our explanations of metapopulation theory in this final revised critical habitat rule, and referred simply to ''populations'' wherever metapopulation structure was irrelevant (the language applied to any population structure). We did not receive any additional comments indicating that our use of metapopulation terminology was confusing or that a reader could not understand the basic model concepts.

We agree with the peer reviewers who supported the use of metapopulation dynamics in our population structure analysis. Our critical habitat units are core occurrence complex habitat-based population distributions designed to capture networks of habitat patches occupied by metapopulations. These units would also protect the next most-likely type of Quino checkerspot butterfly population—diffuse but well-mixed populations that may also have shifting densities and population ''footprints'' (see ''**Background**'' section above). Because at least some elements of metapopulation dynamics models apply to Quino checkerspot butterfly populations, the technical recovery team authors of the Recovery Plan agreed that metapopulation models should be a foundation of the recovery strategy (Service 2003a, pp. 21–31). Nevertheless, the concepts of shifting population distributions and the need to protect areas of temporarily unoccupied habitat that apply to metapopulations also apply to any large population and, therefore, also support critical habitat units based on habitat-based population distributions regardless of specific population dynamics (see ''Criteria Used To Identify Critical Habitat'' section below). The best available scientific data (Service 2003a, pp. 21–31) indicate that local populations within a metapopulation or similar geographically defined sections of Quino checkerspot butterfly populations are periodically extirpated, and these habitats within population distributions are generally recolonized at some future time. Therefore, our consideration of metapopulation dynamics in this critical habitat revision is appropriate.

Peer reviewer A seems to conclude that very few Quino checkerspot butterfly individuals in a population mature to adulthood during any given ''flight season.'' Available captive-rearing data on the Quino checkerspot butterfly's repeated diapause indicate that, in a typical year, approximately 50 percent of a given population does not return to diapause (Pratt 2006, p. 10). The best available scientific data (laboratory observations) indicate that, in a presumably a typical or average growth year, approximately half the post-diapause larvae in a Quino checkerspot butterfly population will mature to adulthood. We are not aware of any other data that contradict our conclusions regarding Quino checkerspot butterfly population dynamics.

*Comment 16*: One peer reviewer stated that fritillaries (various butterflies of the family Nymphalidae, especially of the genera *Speyeria* and *Boloria,* having brownish wings marked with black or silvery spots on the underside) are no longer included in the subfamily Melitaeinae and that most recent publications place fritillaries in the subfamily Heliconiinae.

*Our Response*: In the proposed revised critical habitat rule, we mentioned that fritillaries were one type of butterfly belonging to the same subfamily as the Quino checkerspot butterfly. While the information provided by the peer reviewer is appreciated, such a taxonomic change does not affect Quino checkerspot butterfly taxonomy and, therefore, does not need to be addressed in this final rule.

*Comment 17*: One peer reviewer offered several technical editorial suggestions with regard to our discussion of Parmesan's (1996) study and climate change-driven range shift. The peer reviewer stated that the methods used by Parmesan (1996) were slightly different than described in the proposed revised critical habitat rule and suggested the following specific corrections. The first year of the field census was actually 1992, not 1994 as stated in the proposed revised rule. The historical records ranged from 1860 to 1982, with most dating from 1930-1975. The re-census of these records began in mid-season 1992 and continued through the April field season of 1996 (thus 1996 included the southern populations, but not those in the high-latitude and high-elevation sites in the Sierra Nevada and Canada that don't fly until July and August). The peer reviewer stated that none of Parmesan's (1996) re-censusing included wet El Niño or drought years; therefore, the skewed patterns of extirpations are not attributable to climatic or geographic bias across census years.

The peer reviewer stated that the phrase ''experienced 80 percent of all recorded local extirpations'' on page 3331 of the proposed revised rule is not accurate. The peer reviewer suggested replacing this phrase with: ''* * * and noted that 80 percent of historically recorded populations in the southern part of the range were currently extinct at the time of the re-census in the mid-1990s, while other areas of Edith's checkerspot butterfly further north experienced only 40 percent in the mid-latitudes to as low as 20 percent extirpations along the northern range boundary, and with fewer than 15 percent extirpations in the highest elevation band (above 2,400 m).''

The peer reviewer recommended adding the documentation of upward elevational shift in Edith's checkerspot butterfly from Parmesan (1996) to the description of the northward shift in population distributions on page 3331 of the proposed revised rule. The peer reviewer suggested the following text to be inserted after the statement, ''This shift in range closely matched shifts in mean yearly temperature (Parmesan 1996, pp. 765–766): A parallel elevational gradient in extirpations shifted the mean location of Edith's checkerspot butterfly populations upward by 407 ft (124 m). A breakpoint in the pattern of extirpations occurred at 7,874 ft (2,400 m), with about 40 percent of all populations below 7,874 ft (2,400 m) recorded as extirpated in otherwise suitable habitats, while less than 15 percent were extirpated above 7,874 ft (2,400 m; up to the highest known population at 11,319 ft (3,450 m)). This pattern matched trends in snowpack dynamics in the Sierra Nevada (where the high-elevation populations are found) over the same time period as the butterfly study, with significant trends toward lighter snowpack and earlier melt date below 7,874 ft (2,400 m), and heavier snowpack and a (non-significant) trend toward later melt date above 7,874 ft (2,400 m; Johnson *et al.* 1999).'' Furthermore, the peer reviewer stated that Karl *et al.* 1996 should be added to the latter statement as a citation for the temperature shift over the 20th century across the Edith's checkerspot butterfly's range.

The peer reviewer suggested we add Ehrlich *et al.* 1980; Singer and Ehrlich 1979; and Singer and Thomas 1996 to the list of citations on page 3332 supporting the statement ''Documentation of climate-related changes that have already occurred in California'' as examples of Edith's checkerspot butterfly population extirpations following extreme climatic events.

The peer reviewer stated that, on page 3331 of the proposed revised rule, ''Thomas, *et al.* 2006, pp. 146–147'' should be the year 2004, and this paper is properly cited as discussing projected population extinctions and species range shifts, not observed shifts as all the other cited papers.

*Our Response*: We edited the above ''**Background**'' section to reflect these technical corrections.

*Comment 18*: One peer reviewer noted the statement ''The hundreds of adults observed during surveys in the Tule Peak Core Occurrence Complex in 2001 were unprecedented'' (p. 3331 of the proposed revised rule) is not accurate and cited historical precedents.

*Our Response*: We agree this statement was in error. We are aware of greater magnitude historical Quino checkerspot butterfly ''outbreaks'' than those observed in the Tule Peak Core Occurrence Complex (see ''**Background**'' section above). We meant that such outbreaks were unprecedented since the 1970s, starting with the 1980s drought and subsequent subspecies decline. The paper we intended to cite was Thomas, *et al.* 2006, pp. 146–147 (not 2004). We have edited the above ''**Background**'' section to accurately characterize this information.

*Public Comments*

Comments Related To Primary Constituent Elements and Criteria Used To Identify Critical Habitat

*Comment 19:* One commenter requested that we designate Wright's Field in the community of Alpine as revised critical habitat because: (1) Adult Quino checkerspot butterflies were observed for 3 years at a site within approximately 3 km (1.9 mi) of Wright's Field; (2) habitat at Wright's field appears to be ''ideal;'' (3) Wright's Field provides ''connectivity'' for core Quino checkerspot butterfly populations to the south (populations not otherwise identified by commenter); (4) designation of Wright's Field would facilitate recovery; and (5) the Quino checkerspot butterfly (not currently known from this location) could be discovered at Wright's Field.

*Our Response*: We acknowledge that some areas not included in this final revised critical habitat designation may contain suitable habitat and be proximal to occupied areas. We also acknowledge that management of some habitat areas not designated or proposed as revisions to critical habitat would likely contribute to the conservation (recovery) of this subspecies. However, the Act defines critical habitat as: (1) The specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical and 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 the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Not all areas that may contribute to a species' recovery are necessarily essential for conservation of the species. The best available data (including the information provided by the commenter) do not demonstrate that

the Wright's Field area is essential for the conservation of the subspecies.

We delineated proposed revised critical habitat using criteria based on the conservation and biological needs of the subspecies according to the best available science. Areas proposed as critical habitat are: (1) Currently occupied, core occurrence complex habitat-based population distributions (contiguous habitat within 1.2 mi (2 km) of Quino checkerspot butterfly occurrence records); (2) consistent with recommendations in the Recovery Plan (Service 2003a, pp. 35, 165); and (3) designed to include additional habitat contiguous with the Bautista Road Core Occurrence Complex habitat-based population distribution needed to support core occurrence complex resiliency and range shift resulting from environmental changes due to changing climate patterns. These criteria determine the physical or biological features essential to the conservation of this subspecies, as identified by the PCEs in the appropriate quantity and spatial arrangement, and capture the areas outside the geographical area occupied by the Quino checkerspot butterfly at the time of listing that are essential for the conservation of the subspecies (see the ''Criteria Used To Identify Critical Habitat'' section below). Therefore, we believe our proposed designation and this final designation accurately describe all specific areas meeting the definition of critical habitat for the Quino checkerspot butterfly, and we did not propose Wright's Field for designation as revised critical habitat.

*Comment 20*: One commenter requested increasing the extent of the proposed critical habitat designation to include all recovery units, all occurrence complexes outside of recovery units, and sufficient habitat for dispersal (Service 2003a, pp. 31, 34, 35, 71, 73–76).

*Our Response*: The Recovery Plan (Service 2003a, p. 75) states ''Recovery units include lands both essential and not essential to the long-term conservation of the butterfly, and comprise a variety of habitat types.'' Therefore, designation of all land within all recovery units, and all occurrence complexes as revised critical habitat is not appropriate. Moreover, critical habitat designations do not signal that habitat outside of the designation is unimportant or may not contribute to recovery (see response to Comment 19 above). Occupied habitat outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act.

According to 50 CFR 424.12(e), the Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure conservation of the species. Accordingly, when the best scientific and commercial data available indicate that limiting designation of critical habitat to areas within the geographical area presently occupied by the species is adequate to ensure the conservation of the species, we will not designate critical habitat outside those areas. In this designation, we did include habitat in Unit 7 that is outside the geographical area currently known to be occupied by the Quino checkerspot butterfly because available data support a determination that this habitat is essential for the conservation of the subspecies. However, we are not aware of any data supporting the commenter's request to include all recovery units, all occurrence complexes outside of recovery units, and unoccupied habitat as critical habitat. For discussions of areas for movement and dispersal that meet the definition of critical habitat, see responses to comments 2 and 4 above.

*Comment 21*: One commenter stated that the proposed revised rule did not consider inclusion of the higher-elevation habitat needed to accommodate the subspecies ability to respond to a changing climate in any units except Unit 7, and requested expansion of the critical habitat designation to include all ''stepping stone'' habitat patches that would facilitate dispersal into unoccupied habitat patches at higher elevations (cited Service 2003a, p. 65).

*Our Response*: We believe our criteria capture all areas that meet the definition of critical habitat. Vegetation and host plant distribution data and new distribution information (see response to Comment 20 above) indicate the Bautista Road Core Occurrence complex is part of a greater population distribution, which also shows evidence of supporting range expansion to areas outside of this unit resulting from environmental changes due to changing climate patterns in this area. Hence, we are designating areas between occurrence complexes in Unit 7 where occupancy is expected but has not been documented, but not as stepping-stone habitat patches to facilitate dispersal into unoccupied habitat patches at higher elevations.

We are not aware of any specific data supporting the commenter's request to expand critical habitat to include all possible ''stepping stone'' habitat patches that would facilitate dispersal into unoccupied habitat patches at higher elevations. The recovery plan describes ''stepping stone'' movement areas in reference to landscape connectivity between local habitat patches within a metapopulation distribution (Service 2003a, pp. 13, 162); these movement areas were captured by proposed revised critical habitat units (see also the discussion of movement and dispersal areas in response to comments 2 and 4 above).

*Comment 22*: One commenter asserted the specificity of PCEs were over-restrictive. The commenter maintained having host plant species as required PCEs creates the risk that critical habitat will not be identified when plants do not germinate under dry environmental conditions.

*Our Response:* The PCEs include known nutritional and physiological requirements and sites for breeding, reproduction, and rearing of offspring. Presence of a host plant is an appropriate PCE because the Quino checkerspot butterfly requires host plants for reproduction and rearing of offspring. We list all known host plants within PCE 1(B) and 1(C). Designation of critical habitat is a regulatory process that results in hard-line boundaries, so the only lands ''excluded'' by text are small, developed areas such as roads and single-family homes. Regardless of regulatory implications, large numbers of host plants (usually more than one species) are required during most years to support continued occupancy. Therefore, some host plants should always be detectible in habitat supporting a core occurrence complex, even in drought years when a majority of seeds fail to germinate and most larvae return to diapause. Furthermore, areas can be determined to support PCE 1 by the presence of nectar sources alone within open woody canopy vegetation (see ''Primary Constituent Elements for the Quino Checkerspot Butterfly'' section below). Therefore, suitable habitat within critical habitat units should be identifiable, no matter how low densities of germinating host plants are.

*Comment 23*: One commenter requested that we amend PCE 2 to include areas beyond 656 ft (200 m) of a habitat patch to facilitate movement within and among habitat patches in a metapopulation distribution. The commenter asserted that PCE 2 describes features that only allow for within-habitat patch movement of Quino checkerspot butterflies, not among-patch movement. In support of

their request, the commenter cited White and Levin's (1981, pp. 350–351) findings that adult Quino checkerspot butterfly within-patch movement often exceeded 656 ft (200 m).

*Our Response*: The term ''habitat patch'' within the context of Quino checkerspot butterfly population dynamics and movement refers to a set of host plant ''micro-patches'' within the typical flight range of adult butterflies (about 160 to 660 ft (50 to 200 m)) (Service 2003a, p. 22), and all nectar sources within the same distance of these host plant ''micro-patches'' (Service 2003a, p. 19) in areas of contiguous, open woody canopy vegetation (Service 2003a, pp. 10–11). A habitat patch defines either the entire distribution of a ''well-mixed'' (non-metapopulation or typical) population, or the distribution of a subpopulation (also called a local population) within a metapopulation (Service 2003a, p. 27). We did not map habitat patches because no such detailed measurements were conducted for the Quino checkerspot butterfly. The critical habitat units in this designation were designed using the best available scientific or commercial data to capture population-scale distributions for either a metapopulation or a well-mixed population.

Areas between habitat patches occupied by subpopulations of a metapopulation within a critical habitat unit should be connected to other habitat patches by open-woody canopy areas with at least one PCE. Movement areas within population distributions are already captured by PCEs 1, 2 and 3; therefore, PCE 2 need not be amended to capture movement within habitat patches or between habitat patches occupied by subpopulations of a metapopulation (see also the discussion of movement and dispersal areas in response to comments 2 and 4 above).

The purpose of PCE 2 is to capture closed-woody canopy vegetation on the periphery of a habitat patch that is used by adults and is also likely to deter adult dispersal out of the habitat patch under typical environmental conditions (Service 2003a, p. 10). All movements recorded during White and Levin's (1981, p. 349) study occurred in contiguous, open-woody canopy areas containing host plants and nectar sources already captured by PCE 1. Therefore, areas where movement distances greater than 656 ft (200 m) were recorded by White and Levin (1981, p. 349) near Otay Lakes occurred at locations that do not need to be captured by PCE 2. Furthermore, although White and Levin (1981, pp. 350–352) did record a number of Quino checkerspot butterfly within-habitat patch movement distances greater than 656 ft (200 m), it is not appropriate to apply a study of within-habitat movement to a determination of areas required for between-patch movement.

*Comment 24:* A commenter owns 10,000 ac (4,047 ha) of land near Vail Lake in Riverside County (much of which falls within proposed revised critical habitat). The commenter asserted that the proposed revisions are not valid based on a study conducted by Helix Environmental Planning that the commenter claimed showed no evidence of Quino occupancy on the commenter's land.

*Our Response:* We did not receive a copy of the cited study from the commenter. However, we have a survey report in our files submitted by Helix Environmental Planning, Inc. in 2003 documenting the occurrence of adult Quino checkerspot butterfly on the commenter's Vail Lake property. Surveyors made only three visits (a protocol-level survey requires at least 5) to areas distributed over a 7,500 ac (3,035 ha) area completely surrounding Vail Lake (Helix Environmental Planning 2003, p. 1). Surveyors reported over 145 adult Quino checkerspot butterfly observations from 16 sites broadly distributed across the property (Helix Environmental Planning 2003, pp. 1–2). Surveyors also described large populations of host plants and abundant nectar sources (Helix Environmental Planning 2003, pp. 1–2). Furthermore, all areas proposed as revised critical habitat within Unit 5 (Vail Lake/Oak Mountain) are also within our core occurrence complex habitat-based population distribution (see ''Criteria Used To Identify Critical Habitat'' section below). Therefore, we believe the inclusion of the property in question in the proposed revised critical habitat unit is valid.

Comments Related To Habitat Conservation Plan (HCP) Exclusions

*Comment 25:* One commenter stated that the designation of critical habitat on lands within the Western Riverside County MSHCP is inappropriate because these lands do not require special management considerations or protection; management and protection are already provided by the regional HCP. A second commenter asserted that all lands within the Western Riverside County MSHCP area boundary should be excluded because this regional HCP adequately conserves the Quino checkerspot butterfly. Conversely, a third commenter claimed that lands within the Western Riverside County MSHCP should not be excluded from critical habitat because habitat within the HCP boundaries meets the definition of critical habitat per *Center for Biological Diversity et al.* v. *Norton* (CV 01–409, District of Arizona, January 13, 2002), where Judge David C. Bury stated, ''The fact that a habitat is already under some sort of management for its conservation is absolute proof that habitat is 'critical.'''

*Our Response*: Section 3(5)(A) provides requirements for identifying (defining) critical habitat, in part, as areas that require special management considerations or protection, while section 4(b)(2) directs the Secretary to consider the impacts of designating such areas as critical habitat and provides the Secretary with discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion. In this rule, we do not state that areas do not meet the definition of critical habitat under section 3(5)(A) of the Act because they are being adequately managed. Rather, we considered the management of particular areas that do meet the definition of critical habitat in our exclusion analyses under section 4(b)(2) of the Act.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact to national security, and any other relevant impact, of specifying any particular area as critical habitat. In accordance with 50 CFR 424.19, in conducting an impact analysis of critical habitat, the Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation on proposed or ongoing activities. The Secretary may exclude any 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 and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Therefore, consistent with the Act and our implementing regulations, we must consider the relevant impacts of designating areas that meet the definition of critical habitat prior to finalizing a critical habitat designation.

After determining which areas met the definition of critical habitat for the Quino checkerspot butterfly under section 3(5)(A) of the Act, we took into consideration the economic impact, the impact on national security, and other relevant impacts of specifying any particular area as critical habitat for the Quino checkerspot butterfly. In this final designation, we recognize that designating critical habitat in areas where we have partnerships with landowners that have led to conservation or management of listed species on non-Federal lands has a relevant, perceived impact to landowners and a relevant impact to future partnerships and conservation efforts on non-Federal lands. These impacts are described in detail in the ''Conservation Partnerships on Non-Federal Lands'' section below. Based on these impacts, we evaluated the benefits of designating areas as critical habitat against the benefits of excluding these areas from the critical habitat designation. Please see the ''**Exclusions under Section 4(b)(2) of the Act**'' section of this final rule for a detailed discussion of the benefits of excluding lands covered by management plans versus the benefits of including these areas in a critical habitat designation. Upon weighing the benefits of inclusion against benefits of exclusion, we determined the benefits of excluding all lands owned by or under the jurisdiction of permittees of the Western Riverside County MSHCP in Units 1 through 6 outweigh the benefits of including these areas in the final revised critical habitat designation. Further, we determined exclusion of these areas will not result in extinction of the Quino checkerspot butterfly. Therefore, we excluded all lands owned by or under the jurisdiction of the permittees of the HCP in Units 1 through 6 from this final revised critical habitat designation (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

At the time the Western Riverside County MSHCP permit was issued, Units 1 through 6 were known to contain core occurrence complexes, and over 90 percent of the total area of these units was already designated critical habitat; therefore, the Quino checkerspot butterfly populations within these units are addressed by this regional HCP. However, the new information regarding Quino checkerspot butterfly distribution in Unit 7 was not known at the time the HCP was developed and the permit was issued; therefore, we agree the importance of habitat in this area to the conservation of the Quino checkerspot butterfly is not addressed by the Western Riverside County MSHCP. This area was not designated as critical habitat in 2002. We now have much additional distribution information in this area and determined that designation of Unit 7 is warranted to: (1) Maintain core population resilience, (2) support subspecies range shift to higher elevation habitats due to changing climate patterns that affect the environment, and (3) educate the public about this new distributional data. Therefore, land within the Western Riverside County MSHCP plan area in Unit 7 is included in our final revised designation of critical habitat because the conservation benefits to the subspecies of inclusion of this unique unit outweigh the conservation partnership-related benefits of exclusion (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below for more information).

*Comment 26:* One commenter expressed concern that Federal lands within the Western Riverside County MSHCP plan area were not being considered for exclusion. The commenter further stated that any designation of critical habitat within the Western Riverside County MSHCP boundary would be a violation of the plan's associated Implementing Agreement (IA), citing language in section 6.9 of the Western Riverside County MSHCP (Dudek and Associated Inc. 2003) and section 14.10 of the IA.

*Our Response*: Contrary to the commenter's assertion, section 14.10 of the IA does not preclude critical habitat designation within the plan area (Dudek and Associated Inc. 2003). Consistent with our commitment under the IA, and after public review and comment on the proposed revision to critical habitat for the Quino checkerspot butterfly, we determined through our analysis under section 4(b)(2) of the Act that the maximum extent of allowable exclusions under the Western Riverside County MSHCP was limited to the exclusion of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6.

With regard to the Federal lands within the Western Riverside County MSHCP plan area, we determined that National Forest lands contain the physical and biological features essential to the conservation of the Quino checkerspot butterfly, and therefore, meet the definition of critical habitat (see ''Criteria Used To Identify Critical Habitat'' section below). We acknowledge that the San Bernardino National Forest (Forest Service) has a Land Resource Management Plan (LRMP) that will benefit the Quino checkerspot butterfly and its habitat. The LRMP contains general provisions for species conservation and suggests specific management and conservation actions that will benefit this species and the physical and biological features essential to its conservation. Implementation of the LRMP should address known threats to this species on Forest Service lands. We appreciate and commend the efforts of the Forest Service to conserve federally listed species on its lands.

We considered the request from the commenter that we exclude Forest Service lands from the designation because it would unnecessarily add work in the future to determine the effect regarding critical habitat for actions on its lands and the fact that it had already completed consultation under section 7(a)(2) of the Act on an LRMP. Based on the record before us, we decided not to exclude these lands and are designating National Forest lands that meet the definition of critical habitat for the Quino checkerspot butterfly. We will continue to consider on a case-by-case basis in future critical habitat rules whether to exclude particular Federal lands from such designation when we determine that the benefits of such exclusion outweigh the benefits of their inclusion.

*Comment 27*: One commenter claimed that lands within the Western Riverside County MSHCP should not be excluded from critical habitat because this regional HCP does not adequately protect the subspecies and, therefore, the benefits of inclusion outweigh the benefits of exclusion. The commenter provided specific examples of how they believe the Western Riverside County MSHCP does not adequately protect the subspecies, including: (1) Approximately 10 percent of critical habitat in the proposed revised critical habitat rule falls entirely outside any targeted reserve system (outside criteria cells); (2) conservation is not likely (''only optional'') for the 14 percent of proposed revised critical habitat that is within criteria cells but not the conceptual reserve design; (3) the Western Riverside County MSHCP is not being properly implemented; (4) the Western Riverside County MSHCP does not have adequate funding for implementation; and (5) effects of global warming on covered species was never reviewed or addressed by the Western Riverside County MSHCP.

*Our Response:* When we issued the permit for the Western Riverside County MSHCP, we determined that it provides

adequate protection for the Quino checkerspot butterfly and its habitat within the plan area boundary. We are monitoring the Western Riverside County MSHCP implementation and the subspecies' status and have not altered this determination. Additionally, we have not determined the Western Riverside County MSHCP to be improperly implemented or inadequately funded. We will evaluate the information submitted by the commenter and consider it in our ongoing assessments of the Western Riverside County MSHCP, and continue to work with permittees to make sure the HCP is adequately funded. If during our ongoing assessments of the Western Riverside County MSHCP we determine the HCP does not adequately protect the subspecies, is not being properly implemented, or does not have adequate funding based on all available information, we will take appropriate action with regard to the HCP permit, and may again revise designated critical habitat, subject to available funding and other conservation priorities.

Given specific Western Riverside County MSHCP conservation actions (for example, conservation of habitat in a reserve system, maintenance of core populations, enhancement of habitat), avoidance and minimization measures, and management for the Quino checkerspot butterfly and its habitat, the additional conservation value that may be afforded through a critical habitat designation in Units 1 through 6 is minimal. Furthermore, as demonstrated by comments received from Western Riverside County MSHCP partners, designation of critical habitat would negatively impact our existing working relationships and partnerships that we have developed. The information provided by the commenter does not change our determination that the benefits of excluding lands owned by or under the jurisdiction of permittees of the Western Riverside County MSHCP in Units 1 through 6 from revised critical habitat outweigh the minimal benefits of including these lands (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below for a complete discussion of this exclusion).

It is true that approximately 15 percent of critical habitat in the proposed revised critical habitat rule owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP occurs entirely outside of land targeted for reserve assembly (4,020 ac (1,627 ha), only 4 percent of entire area proposed), and effects of climate change on covered species were not specifically reviewed or addressed by the HCP. The majority of proposed revised critical habitat that is outside of criteria cells occurs in large contiguous areas within Unit 7 (approximately 3,701 ac (1,498 ha)), the remainder is in small land parcels on the periphery of Unit 2 (approximately 319 ac (129 ha)). The inclusion of Unit 7 in revised critical habitat is in part to protect habitat needed to support range shift resulting from environmental changes due to changing climate patterns. In areas outside lands targeted for reserve assembly by the Western Riverside County MSHCP, the additional conservation benefits of critical habitat designation are not minimized by the HCP in Unit 7, so the benefits of inclusion are greater than those in Units 1 through 6. Therefore, we determined the benefits of exclusion do not outweigh the benefits of inclusion in Unit 7 and did not exclude lands owned by or under the jurisdiction of permittees of the Western Riverside County MSHCP in that unit from this revised critical habitat designation (see additional discussion in the ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Comment 28*: One commenter requested that lands within the Western Riverside County MSHCP not be excluded from critical habitat based on conservation benefits. The commenter stated the Western Riverside County MSHCP permittees opposition to the designation of critical habitat suggests they believe the designation would result in a greater conservation burden on them, and therefore would result in a higher level of conservation for the subspecies than will occur under the Western Riverside County MSHCP.

*Our Response:* We acknowledge that stakeholder and permittee comment letters indicate opposition to designation of lands covered by the Western Riverside County MSHCP; however, these opinions are based on perception, and as such should not be the basis for determining the conservation value of critical habitat designation (benefits of inclusion). Our analysis of the benefits of inclusion and exclusion provides a more informed measure of the benefits of critical habitat designation than permittee and stakeholder opposition. Conversely, comments received from Western Riverside County MSHCP partners do indicate designation of critical habitat would negatively affect our existing positive working relationships and partnerships, thereby discouraging future HCP participation. See response to Comment 27 above for a discussion of the benefits of inclusion of lands within the Western Riverside County MSHCP plan area in the revised critical habitat designation (see additional discussion in the ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section).

*Comment 29*: One commenter believes that we should not exclude lands covered by HCPs because HCPs do not provide as much protection as critical habitat. The commenter cited Taylor *et al.* (2005) as having found that species with critical habitat are less likely to decline, and over twice as likely to recover as those without critical habitat. The commenter also cited Kareiva *et al.* (1999) as finding that most HCPs fail to adequately protect species.

*Our Response*: We disagree with the commenter that HCPs provide less protection than critical habitat designation. The Western Riverside County MSHCP and Chula Vista Subarea Plan incorporate on-going management and protection for the Quino checkerspot butterfly that will benefit the long-term conservation of the subspecies. The protection and long-term management provided by these HCPs to Quino checkerspot butterfly habitat extend to private lands that otherwise lack a Federal nexus under which consultation could be triggered. These two regional HCPs provide for proactive monitoring and management of conserved lands important to the survival and recovery of the Quino checkerspot butterfly. Such conservation needs are typically not addressed through application of the statutory prohibition on destruction or adverse modification of critical habitat.

We also note that exclusions are not based on the difference between protection measures provided by critical habitat designation or HCPs in isolation, but how the redundancy of protections provided by an HCP with those provided by critical habitat designation minimizes the overall conservation value of designation, and how the remaining benefits of designation are negated by the benefits of exclusion (maintaining partnerships and fostering future HCPs). Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by critical habitat designation.

The primary benefit of a critical habitat designation is the requirement that Federal agencies do not fund,

authorize, or carry out actions on designated lands that adversely modify or destroy critical habitat. Therefore, where there is a Federal nexus, Federal agencies consult with the Service under section 7(a)(2) of the Act. Based on the conservation benefits provided by the Western Riverside County MSHCP (in proposed Units 1 through 6) and the Chula Vista Subarea Plan, we believe the additional protection provided to Quino checkerspot butterfly habitat by critical habitat designation would be minimal. Therefore, we are excluding most lands within the plan areas of these HCPs based on the benefits of maintaining our conservation partnerships.

We also disagree with the commenter that the cited studies are applicable to the exclusion of lands under the Western Riverside County MSHCP and Chula Vista Subarea Plan under the MSCP regarding Quino checkerspot butterfly conservation. The results of Taylor *et al.* (2005, pp. 360–367) do indicate a significant conservation benefit of critical habitat designation; however, that study did not analyze or discuss the effects of HCP-based exclusions. The benefits of exclusion for any particular HCP must be analyzed independently and balanced against the benefits of inclusion because HCPs: (1) Are variable in scope; (2) contain variable conservation and management planning efforts; and (3) document effects of conservation measures on species abundance trends that may not be apparent for many years. Many HCPs analyzed by Kareiva *et al.* (1999, pp. 10, 21, 22, 89) were not geographically comparable to the large, regional multi-species plans such as Western Riverside County MSHCP and the Chula Vista Subarea Plan under the MSCP, and only 4 percent were habitat-based like these large regional HCPs (Kareiva *et al.* 1999, pp. 21, 22). Also, the stated purpose of Kareiva *et al.*'s (1999, p. 9) study was to evaluate the extent to which scientific data and methods were used in development and justification of HCP agreements, not to evaluate what effects plans have on biological systems or species. Kareiva *et al.* (1999, p. 9) stated, ''Because the vast majority of HCPs have been initiated since 1994, it is simply too early to evaluate whether the plans are working.'' Therefore, general conclusions in the literature cited by the commenter do not justify including lands covered by these HCPs.

Comments Related To Legal and Procedural Issues

*Comment 30*: One commenter stated designation of critical habitat on lands within the Western Riverside County MSHCP is arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. Section 701 *et seq.*), given the Service frequently excludes MSHCP lands from critical habitat designations, and the County of Riverside Regional Conservation Authority has demonstrated good faith in assembling Quino checkerspot butterfly habitat by purchasing the Winchester 700 property ''for a very high price,'' and by purchasing other Quino checkerspot butterfly habitat parcels in Riverside County.

*Our Response*: We agree that the Service frequently excludes MSHCP lands from critical habitat designations and the County of Riverside Regional Conservation Authority has demonstrated good faith in assembling Quino checkerspot butterfly habitat by purchasing the ''Winchester 700'' property and other habitat parcels in Riverside County. We do not agree that designating critical habitat on lands in Unit 7 is arbitrary and capricious under the Administrative Procedure Act because we had a reasoned basis for our decision (see comment 25 and associated response above for further discussion).

*Comment 31*: One commenter believes that final revised critical habitat boundaries should not include any additional lands that were not specifically described in the 2008 proposed revised rule (73 FR 3328; January 17, 2008), unless these changes are first noticed to the public and there is opportunity for public comment.

*Our Response*: No additional lands are included within the boundaries of this final revised critical habitat designation that were not described in the proposed revised critical habitat rule published in the **Federal Register** on January 17, 2008 (73 FR 3328). We did remove some lands from our revised critical habitat proposal, and this change was described in the notice of availability of the DEA, which published in the **Federal Register** on December 19, 2008 (73 FR 77568).

Tribal Comments

*Comment 32*: One representative of the Ramona Band of Cahuilla Mission Indians of California (Ramona Band of Cahuilla Indians) supported exclusion of all lands within the Western Riverside County MSHCP area boundary because they believe the Western Riverside County MSHCP adequately conserves the Quino checkerspot butterfly. This commenter further stated that designation of critical habitat within the Western Riverside County MSHCP boundary would be a violation of the IA, stating they believe language in section 6.9 of the Western Riverside County MSHCP (Dudek and Associates 2003) and section 14.10 of the IA means no critical habitat for the Quino checkerspot butterfly should be designated in the Western Riverside County MSHCP Plan Area.

*Our Response*: Please see our responses to comments 25 and 26 above, and see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below for more information regarding the exclusion process and why we did not exclude lands in Unit 7 that are owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP.

*Comment 33*: The Campo Band of Diegueno Mission Indians of the Campo Reservation, California (Campo Band of Kumeyaay Indians), requested that the Service clearly state which subsection of section 3(5)(A) of the Act is being relied upon for each unit meeting the definition of critical habitat. If land is defined as critical habitat under subsection 3(5)(A)(ii) because it was not occupied at the time of listing, the tribe suggests including an explanation for why those lands are considered essential. The Campo Band of Kumeyaay Indians specifically requested that if tribal lands are included in Unit 9, the Service should explain why this habitat that was ''not occupied at the time of listing'' is in need of special management and essential to the subspecies' conservation.

*Our Response*: Table 1 of the proposed revised critical habitat rule identifies which critical habitat units were occupied at the time of listing, and, therefore, what subsection of section 3(5)(A) of the Act applies to lands in each unit. Units 7 (Bautista) and 9 (La Posta/Campo) are designated under subsection 3(5)(A)(ii) and are outside of the geographical area occupied by the Quino checkerspot butterfly at the time it was listed.

We made a determination that lands in Unit 9 are essential for the conservation of the subspecies because it is contains unique habitat, is distant from other units (indicating occupancy by a unique and independent population), and because ensuring persistence of populations associated with core occurrence complexes is essential for conservation of the Quino checkerspot butterfly. In identifying areas that meet the definition of critical habitat, we recognize the importance of including all lands necessary to support resilient core populations. We are not aware of any data that contradict our determination that tribal lands included

in proposed revised critical habitat are essential for the conservation of the subspecies. With regard to special management, section 3(5)(A)(i) of the Act only requires a determination that the physical or biological features essential to the conservation of the species that are found in areas within the geographical area occupied by the species at the time of listing may require special management considerations or protection. Therefore, because lands in Unit 9 are outside the geographical area occupied by the species at the time of listing, we did not provide a determination of special management needs for Unit 9 in the proposed revised rule or this final revised rule.

*Comment 34*: The Campo Band of Kumeyaay Indians believes the benefits of critical habitat designation are minimal for La Posta/Campo Unit 9, given the likelihood habitat is occupied and consultation would be required regardless of critical habitat designation. They support exclusion of the entire unit based on insufficient conservation benefits.

*Our Response*: Section 4(b)(2) of the Act directs the Secretary to designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. Although we do not agree with the tribe's assertion that all lands within the La Posta/Campo Unit 9 should be excluded based on ''insufficient'' conservation benefits, our analyses revealed that tribally owned portions of the unit should be excluded based on impacts to national security, government-to-government relations, and economics. We excluded all tribally owned lands because we determined that the impacts to government-to-government relationships and economics outweighed the benefits of including those areas as critical habitat, and that the exclusion would not result in the extinction of the Quino checkerspot butterfly. We also excluded lands owned or controlled by the Navy in Unit 9 due to impacts to national security. No private lands in Unit 9 are covered by an HCP or other management plan that addresses subspecies conservation (see response to comments 10 and 25–29 above, and the ''**Application of Section 4(b)(2)—Impacts To Government-To-Government Relationships With Tribes And Economics,'' and ''Application of Section 4(b)(2)—Impacts to National Security**'' sections below for more details on our exclusion analyses).

*Comment 35*: The Campo Band of Kumeyaay Indians stated that the proposed rule does not explain any progress toward understanding subspecies population dynamics, habitat requirements, and population distributions made since the Recovery Plan was published in 2003. They requested detailed documentation of any new information and how it supports the proposed revisions to critical habitat.

*Our Response*: The Service received significantly more survey data documenting population distributions (which inform our understanding of population dynamics) than were available at the time the Recovery Plan published. The ''Status and Local Distribution of Populations'' sections (for Riverside and San Diego counties) of the proposed revised critical habitat rule (73 FR 3328; January 17, 2008) provided detailed documentation of new distribution information. Several relatively isolated occurrences were recently discovered despite previously negative survey results prior to publication of the Recovery Plan (such as Mission Trails Park, Sycamore Canyon Open Space Preserve). Discovery of new non-core and core occurrence complexes (including La Posta/Campo) indicate Quino checkerspot butterfly core populations may have larger distributions and are more resilient than believed at the time the Recovery Plan published. Therefore, the new non-core occurrence complexes, and new occurrences that expanded existing occurrence complexes, support our focus on designating population distributions associated with core occurrence complexes (see ''Criteria Used to Designate Critical Habitat'' section below).

We have also acquired considerable additional information regarding the types of habitat used by the Quino checkerspot butterfly since the Recovery Plan published in 2003. Knowledge regarding the physical and biological features essential to conservation of the species is required for habitat delineation and descriptions (PCEs). New habitat information acquired since Recovery Plan publication includes: (1) Subspecies use of unique redshank chaparral habitat, where no species of *Plantago* host plant occur (La Posta/Campo Unit 9, the new high-elevation Quinn Flat Occurrence Complex in Riverside County); (2) heavy use of *Antirrhinum coulterianum* host plants that can occur following fire at lower elevations adjacent to where *Plantago erecta* occurs (Skinner/Johnson Unit 2; CFWO 2004); (3) *A. coulterianum* and possibly *Collinsia concolor* supports occupancy in habitat patches where *Plantago* host plant species are absent (La Posta/Campo Unit 9); and (4) Quino checkerspot butterflies inhabit areas above 5,000 ft (1,524 m) in elevation (Pratt and Pierce 2005, pp. 4–5, 11–12; Pratt 2005, p.1; SBNF GIS database). Since publication of the proposed revised critical habitat rule, we also learned another species of host plant previously suspected of supporting reproduction is used and important to conservation of the subspecies near the community of Anza (see ''*Summary of Changes From the 2008 Proposed Rule To Revise Critical Habitat*'' section below). Therefore, our conclusion that proposed revised units meet the definition of critical habitat is supported by geographically specific habitat information, and the new host plant information supports the addition of a new biological feature to our list of PCEs.

*Comment 36*: The Campo Band of Kumeyaay Indians requested we clarify the criteria for designating critical habitat by defining the term ''occupied habitat,'' and define the geographic size and number of adults (or adults and larvae) required for an occurrence complex to qualify as ''core.'' The tribe specifically expressed concern that the proposed rule described core occurrence complexes as likely to contain source subpopulations for a metapopulation without providing sufficient data to support this conclusion.

*Our Response*: Occupancy within a critical habitat unit is defined by the habitat-based population distribution of an occurrence complex. A habitat-based population distribution includes all contiguous habitat within 1.2 mi (2 km) of a Quino checkerspot butterfly occurrence (see ''Criteria Used to Designate Critical Habitat'' section below). Habitat-based population distributions are used to define population-scale occupancy because observation locations are one-dimensional and static, and expanded areas based solely on recorded movement distances of a species may include non-habitat. The proposed revised critical habitat units are the habitat-based population distributions associated with core occurrence complexes. Therefore, the term ''occupied habitat'' in this rule refers to areas at the spatial and temporal scales of a population distribution described using the best available scientific data.

We define core occurrence complexes using several criteria. Population attributes such as subspecies abundance, total area occupied, and evidence of reproduction are all

indicators of population resilience. To clarify, a ''core occurrence complex'' is defined as an area where at least two of the following criteria apply: (1) 50 or more adults were ever observed during a single survey; (2) immature life stages have been recorded; and (3) the geographic area of an occurrence complex (within 0.6 mi (1 km) of subspecies occurrences) is greater than 1,290 ac (522 ha) (see ''**Background**'' section above). Therefore, all proposed revised critical habitat units contain occurrence complexes that qualify as ''core.''

We based our conclusion that core occurrence complexes are likely to contain source populations on sound scientific theory and information. Quino checkerspot butterfly populations are likely to be metapopulations (Service 2003a, pp. 21–31), and core occurrence complex habitat-based population distributions are large enough to capture most of a metapopulation distribution (Service 2003a, p. 24; see also Comment 15 and associated response above). The size of proposed revised critical habitat units are proportional to documented Edith's checkerspot butterfly population distributions that have longer predicted persistence times (Service 2003a, p. 24). Therefore, the final revised critical habitat units are likely to contain source subpopulations.

*Comment 37*: The Campo Band of Kumeyaay Indians requested the Service explain how it can ''violate'' its own methods for determining occurrence complex boundaries by including geographic areas beyond the habitat-based population distribution within Unit 9.

*Our Response:* Although occurrence complexes are geographically defined in part by overlapping 0.6 mi (1 km) movement distances, we did not map occurrence complex ''boundaries'' as described in the comment. Our methods for determining occurrence complex status did not include geographic boundary determination for the La Posta/Campo Core Occurrence Complex. The only boundaries associated with occurrence complexes we established in the proposed revised critical habitat rule are habitat-based population distributions used to map proposed revised critical habitat units (see response to comment 36 above and ''Criteria Used to Designate Critical Habitat'' section below). Unit 9 was limited to lands within the habitat-based population distribution of the La Posta/Campo Core Occurrence Complex, and did not include any areas outside that geographic delineation. We revised our discussion in the ''Criteria Used To Identify Critical Habitat'' section below to clarify our methods.

*Comment 38*: The Campo Band of Kumeyaay Indians; two representatives of the Ramona Band of Cahuilla Indians; the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California (Barona Band of Mission Indians); the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California (Pauma Band of Mission Indians); and the Pala Band of Luiseno Mission Indians of the Pala Reservation, California (Pala Band of Mission Indians), all believe there is insufficient evidence that tribal lands included in proposed revisions to critical habitat are essential to conservation of the subspecies. These tribal representatives also stated that designation of tribal lands as critical habitat will constitute a significant burden to the affected tribes, and per Secretarial Order 3206, the Service should demonstrate that conservation needs of the subspecies cannot be met by limiting critical habitat designation to nontribal lands. The Campo Band of Kumeyaay Indians specifically requested its lands be excluded from critical habitat designation for economic reasons based on the findings of the DEA.

*Our Response*: We believe our proposed revisions to critical habitat were supported by sufficient scientific data. Section 4(b) of the Act requires 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 our decisions are based on the best scientific data available. We used primary and original sources of information as the basis for our recommendations to designate revised critical habitat.

Ensuring persistence of populations associated with core occurrence complexes is critical to the conservation of the Quino checkerspot butterfly. In identifying areas that meet the definition of critical habitat, we recognize the importance of including all lands necessary to support resilient core populations. The best available scientific data indicate management of those portions of tribally owned lands (see response to comment 37 above for more information) that were proposed as revised critical habitat is essential to conserving the affected core populations. We utilized GIS data to limit the proposed designation to only those lands necessary for the conservation of the identified core populations. Therefore, we believe our proposed revisions to critical habitat are well supported by the best available scientific data.

During our process of identifying lands that meet the definition of critical habitat, we identified several tribes whose reservations include portions of Quino checkerspot butterfly habitat-based population distributions associated with populations needed for conservation of the subspecies, including the Campo Band of Kumeyaay Indians, the Ramona Band of Cahuilla Indians, the Santa Rosa Band of Cahuilla Indians (California), and the Cahuilla Band of Indians. Section 3(B)(4) of the Appendix to Secretarial Order 3206 states, ''In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands,'' indicating proposed critical habitat should be limited to nontribal lands if conservation needs can still be met by doing so. We determined that, without Ramona Band of Cahuilla Indians' land and Santa Rosa Band of Cahuilla Indians' land, the remaining habitat in Unit 7 still contained sufficient PCEs in the appropriate quantity and spatial arrangement for the subspecies' conservation needs. Therefore, we did not propose as revised critical habitat any tribal reservation lands in Unit 7.

In our exclusion analyses, we evaluated the burden of critical habitat designation on affected tribes. Section 3(B)(3) of the Appendix to Secretarial Order 3206 states, ''[the Service shall] * * * Recognize the [conservation] contribution to be made by affected Indian tribes * * * and evaluate economic impacts of such proposals with implications for tribal trust resources or the exercise of tribal rights.'' Sections 3(B)(3) and 3(B)(4) (see above quote) of the Appendix to Secretarial Order 3206 indicate tribal lands should be excluded from critical habitat designation if the burden is significant and the ability to meet species' conservation needs are not precluded by exclusion. The final economic analysis (FEA), and new land ownership information indicating that Ramona Band of Cahuilla Indians tribal fee-lands outside the reservation lands were included in proposed revised critical habitat in Unit 7, indicated the proposed designation may impose a

significant economic burden on the Campo Band of Kumeyaay Indians, the Ramona Band of Cahuilla Indians, and the Cahuilla Band of Indians. Based on the economic impact and Federal policies, including Secretarial Order 3206, that mandate maintenance of good working relationships with tribes and deference to tribal management authority, we determined the benefits of exclusion outweigh the benefits of inclusion for Campo Band of Kumeyaay Indians', Ramona Band of Cahuilla Indians', and Cahuilla Band of Indians' lands, and determined the exclusions of lands in Units 6, 7, and 9 will not lead to the extinction of the subspecies. Therefore, we excluded all tribal lands proposed for revised designation from critical habitat under 4(b)(2) of the Act. Please see the ''Application of Section 4(b)(2) – Economic Impact'' section below for a discussion of these tribal exclusions.

*Comment 39*: One representative of the Ramona Band of Cahuilla Indians believes that, according to Secretarial Order 3206, Principle 3(C), the proposed revised critical habitat designation on property adjacent to or near Ramona Band of Cahuilla Indians lands should have triggered consultation and written notice of proposed conservation restrictions. The Ramona Band of Cahuilla Indians also stated that land proposed as revised critical habitat is adjacent to the only road that allows access to and from the Ramona Band of Cahuilla Indians' Reservation. The road is critical to the health and safety of the Ramona Band of Cahuilla Indians and designating critical habitat adjacent to the tribes only access to and from the Ramona Indian Reservation could potentially affect a proposed project to pave the existing dirt road, which would make it more usable for tribal members and health and safety service responders (Riverside County Sherriff and local and regional fire departments). The tribe stated that a delay in the project or denial of permits to pave the road as a result of designating lands adjacent to the road as revised critical habitat could cost the tribe more than $1 million already allocated to this project. The tribe believes it would have to spend hundreds of thousands more dollars to maintain the existing unpaved road.

*Our Response*: We considered the Ramona Band of Cahuilla Indians' assertion described above. Section 5, Principle 3(C) of Secretarial Order 3206 states, ''At the earliest indication that the need for Federal conservation restrictions is being considered for any species, the Departments, acting in their trustee capacities, shall promptly notify all potentially affected tribes, and provide such technical, financial, or other assistance as may be appropriate, thereby assisting Indian tribes in identifying and implementing tribal conservation and other measures necessary to protect such species. In the event that the Departments determine that conservation restrictions are necessary in order to protect listed species, the Departments, in keeping with the trust responsibility and government-to-government relationships, shall consult with affected tribes and provide written notice to them of the intended restriction as far in advance as practicable.'' Section 3(B)(4) of the Appendix to Secretarial Order 3206 specifically states ''In keeping with the trust responsibility, [the Service] shall consult with the affected Indian Tribe(s) when considering the designation of critical habitat in an area that may impact Tribal trust resources, tribally-owned fee lands, or the exercise of Tribal rights.''

We do not anticipate any additional burden to the Ramona Band of Cahuilla Indians due to the designation of Forest Service lands adjacent to tribal lands. All referenced Forest Service lands are occupied, and we were engaged in active Section 7 consultation with the Forest Service on the road widening and paving project prior to proposing revisions to critical habitat (73 FR 3328; January 17, 2008). Identifiable potential economic impacts in occupied Quino checkerspot butterfly habitat that may result solely from the designation of critical habitat are likely limited to administrative costs. Therefore, we do not expect any additional regulatory actions or measures will be required solely due to designation of the referenced U.S. Forest Service lands as critical habitat and we did not initiate consultation under the Secretarial Order with the Ramona Band of Cahuilla Indians with regard to these lands based on proposed revisions to critical habitat.

Following receipt of the Ramona Band of Cahuilla Indians' first comment letter, we met with the tribe on October 16, 2008, to consult regarding any economic and social impacts the proposed revised designation of critical habitat would have on the tribe. After publication of the proposed revised critical habitat rule, we learned that Ramona Band of Cahuilla Indians tribal fee lands had been included in the proposal. These particular lands are surrounded by nontribal lands that meet the definition of critical habitat and were properly proposed as critical habitat. We evaluated these tribal lands for exclusion and determined the benefits of exclusion outweigh the benefits of inclusion for Ramona Band of Cahuilla Indians' tribal fee lands. Therefore, we excluded these lands from critical habitat under 4(b)(2) of the Act. See the ''**Application of Section 4(b)(2) of the Act – Impacts to Government-To-Government Relationships With Tribes and Economics**'' section below and for further discussion of this exclusion. We will continue to work cooperatively with the Ramona Band of Cahuilla Indians to conserve federally listed species on its lands.

*Comment 40*: The Campo Band of Kumeyaay Indians requested its land be excluded unless the Service demonstrates the benefits of inclusion outweigh the benefits of ''repairing the Service's working relationship with them.'' Specifically, the Campo Band of Kumeyaay Indians cited *Center for Biological Diversity* v. *Norton* (240 Supp. 2d 1090, 1105; D. Ariz. 2003) where the Service's decision to exclude tribal lands was upheld by the court because ''the benefit of maintaining a good working relationship with the Tribe outweighed the benefit * * * [of designating tribal lands] as [critical habitat].''

*Our Response*: We evaluated the benefits of exclusion of all tribal lands from this revised critical habitat designation. Maintaining and fostering partnerships and good working relationships are benefits of exclusion and are mandated by Secretarial Order 3206. Consistent with Secretarial Order 3206 and Executive Order 13175, we also believe tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Consistent with the Act and Secretarial Order 3206, we also evaluated the economic impact of critical habitat designation on tribes. The final economic analysis (FEA) indicated the proposed designation may impose a significant economic burden on the Campo Band of Kumeyaay Indians, the Ramona Band of Cahuilla Indians, and the Cahuilla Band of Indians. We determined the benefits of exclusion outweigh the benefits of inclusion for Campo Band of Kumeyaay Indians', Ramona Band of Cahuilla Indians', and Cahuilla Band of Indians' lands, and determined the exclusions will not lead to the extinction of the subspecies (see response to Comment 38 above and ''**Application of Section 4(b)(2)—Impacts to Government-To-Government Relationships With Tribes and Economics**'' section of this rule). Therefore, we excluded all tribal lands proposed for revised designation from critical habitat under 4(b)(2) of the Act.

We recognize and value our good working relationship with the Campo Band of Kumeyaay Indians and will continue to work cooperatively with the tribe to conserve federally listed species on its lands.

*Comment 41*: The Campo Band of Kumeyaay Indians stated they believe the Service did not fulfill the mandate of Secretarial Order 3206 by initiating consultation with them the moment it considered taking action that would affect tribal trust resources (critical habitat designation). The Campo Band of Kumeyaay Indians stated that the Service only informed them it was considering inclusion of its land at a meeting in November 2007, requested by the Service, and that the Service's position at that meeting was that it was ''considering'' inclusion of tribal lands, not intending to do so.

*Our Response*: We believe we have fulfilled our responsibilities to the Campo Band of Kumeyaay Indians under Secretarial Order 3206. As mandated by Section 5, and Principle 3(C) of Secretarial Order 3206, as well as Section 3(B)(4) of the Appendix to Secretarial Order 3206 (see response to Comment 39 above), we initiated tribal coordination regarding possible proposed revised critical habitat on Campo Band of Kumeyaay Indians' lands through the Bureau of Indian Affairs, Regional Endangered Species Coordinator in August of 2007. We initiated direct contact with the Campo Band of Kumeyaay Indians in a letter dated September 11, 2007, requesting the opportunity to discuss our findings prior to publication of proposed revisions to critical habitat. At a meeting on November 7, 2007, we explained why we believed some tribal lands met the definition of critical habitat and requested they submit any data we had not considered. At this meeting we mentioned that no agency decision had yet been made and explained that any final recommendation on the proposal we submitted for signature and publication in the **Federal Register** would address any data submitted by the tribe. We continued to meet and correspond with the Campo Band of Kumeyaay Indians regularly during the decision-making process. Therefore, we believe we fulfilled the mandate of Secretarial Order 3206 with regard to the proposal of revised critical habitat and this final designation of revised critical habitat.

*Comment 42*: The Campo Band of Kumeyaay Indians stated they believe the Service did not fulfill its duty to assist them in pursuing its own efforts to protect the subspecies, including assisting in crafting a tribal management plan.

*Our Response*: Principle 3(A) of Secretarial Order 3206 states, ''The Departments shall offer and provide such scientific and technical assistance and information as may be available for the development of tribal conservation and management plans to promote the maintenance, restoration, enhancement and health of the ecosystems upon which [listed] species * * * depend, including the cooperative identification of appropriate management measures to address concerns for such species and their habitats.'' Furthermore, Principle 3(D) of Secretarial Order 3206 states, ''In their roles as trustees, the Services shall offer and provide technical assistance and information for the development of tribal conservation and management plans to promote the maintenance, restoration, and enhancement of the ecosystems on which [listed] species * * * depend.'' We provided the Campo Band of Kumeyaay Indians with a draft Quino checkerspot butterfly management plan specific to its lands, as well as example management plans for other species on other tribal lands, prior to our meeting November 7, 2007 (see response to Comment 41 above). At that meeting, we discussed these documents and management options for the Quino checkerspot butterfly on tribal lands and offered to assist with further management planning. We continued to correspond and meet with the Campo Band of Kumeyaay Indians and provide training and technical assistance to tribal staff during development of the proposed revised critical habitat proposal, the DEA, and this final revised rule. Therefore, we believe we fulfilled our responsibility as trustees by assisting the Campo Band of Kumeyaay Indians to the full extent possible.

*Comment 43*: The Campo Band of Kumeyaay Indians requested exclusion of its lands from any final revised critical habitat designation because the educational benefits associated with a Quino checkerspot butterfly critical habitat designation are less than those already provided by its conservation program, and the tribe believes it already provides adequate conservation of the Quino checkerspot butterfly through a long-established environmental protection program (the Campo Environmental Protection Agency). The tribe believes the program demonstrates the Campo Environmental Protection Agency's ability to manage its own land base by providing knowledgeable, trained personnel and engaging in conservation activities. The tribe cited the successful completion of riparian habitat restoration projects in degraded watersheds on the Campo Reservation as an example of tribal habitat management.

*Our Response*: In our exclusion analysis, we considered how the educational benefits associated with a Quino checkerspot butterfly revised critical habitat designation may already have been provided by Campo Band of Kumeyaay Indians' conservation program. Educational benefits are a benefit of inclusion, and a determination that the benefits of exclusion outweigh the benefits of inclusion, along with a determination that exclusion would not result in the extinction of the subspecies, must be made before we can exclude lands that meet the definition of critical habitat from a final revised critical habitat designation. In our analysis, we did find that the educational benefits of revised critical habitat designation may have already been realized by the revised critical habitat proposal process and Campo Band of Kumeyaay Indians' conservation program.

In our exclusion analysis, we evaluated the conservation measures provided by Campo Environmental Protection Agency activities. Existing conservation measures minimize the benefits of inclusion, but, as stated above, the benefits of exclusion must outweigh the benefits of inclusion, and a determination that exclusion would not result in the extinction of the subspecies must be made before we can exclude lands from a final revised critical habitat designation. Per Secretarial Order 3206 and other published policies on Native American natural resource management, we are aware of our mandate to minimize intrusion on its sovereign abilities to manage natural resources in accordance with its own policies, customs and laws. We agree that the Campo Environmental Protection Agency has demonstrated an ability to manage its own land base by providing knowledgeable, trained personnel and engaging in conservation activities. Per the FEA, we also acknowledge that critical habitat designation may result in use of tribal resources for administrative (consultation) purposes that might otherwise be used for conservation. Therefore, we found the benefits of inclusion due to conservation achieved through section 7 consultation associated with designated critical habitat were minimized by existing tribal conservation activities. However, we did not exclude Campo Band of Kumeyaay Indians' land from revised critical habitat designation based solely

on the Campo Environmental Protection Agency conservation activities.

We appreciate information on the education and conservation program provided by the Campo Band of Kumeyaay Indians. Per Secretarial Order 3206 and other published policies on Native American natural resource management, we considered all benefits of exclusion including: (1) The need to minimize economic impacts projected in the DEA; (2) the need to minimizing intrusion on the Campo Band of Kumeyaay Indians' sovereign abilities to manage natural resources in accordance with its own policies, customs and laws; and (3) the need to maintain our good working relationships with the Campo Band of Kumeyaay Indians. We further determined the benefits of excluding Campo Band of Kumeyaay Indians' lands outweigh the benefits of designating these lands, and these exclusions will not result in the extinction of the Quino checkerspot butterfly (see ''**Application of Section 4(b)(2) – Impacts to Government-To-Government Relationships With Tribes and Economics**'' section below for more information). Therefore, we excluded all Campo Band of Kumeyaay Indians' lands from this final revised critical habitat designation. We value our good working relationship with the Campo Band of Kumeyaay Indians and will continue to work cooperatively with the tribe to conserve federally listed species on its lands.

*Comment 44*: The Campo Band of Kumeyaay Indians commented that the draft economic analysis does not reflect the potential exclusion of its lands from critical habitat designation, which is highlighted in the **Federal Register** notice re-opening the public comment period published on December 19, 2008.

*Our Response*: The economic analysis has been revised to reflect this potential exclusion. Throughout the analysis, costs associated with areas explicitly identified by the Service as under consideration for exclusion are presented and discussed separately from areas that were not explicitly identified as being considered for exclusion.

*Comment 45*: Campo Band of Kumeyaay Indians' suggested several editorial changes for the FEA based on its review of the DEA: (1) There should be a discussion of the role of Secretarial Order No. 3206 in regards to tribal lands proposed for critical habitat designation; (2) an exhibit presenting cost information for a proposed landfill project on its lands should be included in Chapter 6; (3) the Bureau of Indian Affairs (BIA) should be included under the discussion of government agencies overseeing habitat management activities in Chapter 7, titled ''Potential Impacts to Habitat Management;'' and (4) several exhibits mislabeling Unit 9, La Posta—Campo as ''Campo–La Posta'' should be corrected.

*Our Response*: The following corrections were made to the FEA: (1) Explanatory text regarding Secretarial Order No. 3206 and its role in the decision-making process of the Service has been integrated into Chapter 3; (2) Exhibit 6–5 presenting the potential costs to the tribe for the proposed landfill project has been added; and (3) we corrected the labeling of Unit 9 throughout. We are unaware of habitat management activities for the subspecies undertaken or planned by BIA. The FEA authors contacted a representative of BIA, and he was also unaware of any such activity by BIA. Furthermore, our efforts to contact parties who submitted public comments on behalf of the BIA were unsuccessful. Consequently, the FEA was not modified to include BIA in the discussion of government agencies overseeing habitat management activities in Chapter 7.

Comments From Other Federal Agencies

*Comment 46*: BIA believes that there is insufficient evidence that tribal lands included in the proposed revisions to critical habitat are essential to conservation of the subspecies. BIA also stated that, per Secretarial Order 3206, the designation of portions of the Campo Band of Kumeyaay Indians' and Cahuilla Band of Indians' reservations would constitute a significant burden to those tribes. The BIA also requested that the Service: (1) Withdraw all tribal lands from those identified for the proposed revised designation of critical habitat; (2) consult with the Ramona Band of Cahuilla Indians and other tribal nations to address the economic and social impacts the proposed designation of critical habitat would have on tribal lands, tribal infrastructure, tribal health and safety, and proposed projects that would further the tribe's health, welfare, and self-reliance; (3) consult with potentially affected tribal nations per Secretarial Order 3206; and (4) issue a revised proposal based on mandated government-to-government consultation with affected tribes and tribal nations.

*Our Response*: We used the best available scientific data to determine whether certain tribal lands are essential to the conservation of the subspecies (see also responses to comments 35 and 36 above), and we are not aware of any data that contradict our determination. Therefore, we included some tribal lands in the proposed revision to critical habitat. See the ''Criteria Used to Designate Critical Habitat'' section below for further discussion.

We believe we fulfilled our responsibilities to the tribes under Secretarial Order 3206 throughout the designation process. Please see our responses to comments 39–42 above regarding our consultations with the Campo Band of Kumeyaay Indians and the Ramona Band of Cahuilla Indians. Additionally, we met informally with the Cahuilla Band of Mission Indians' Environmental Officer to discuss our proposed designation and answer any questions the tribe had regarding our proposed revised designation of critical habitat.

We evaluated tribal lands for exclusion and determined the benefits of exclusion outweigh the benefits of inclusion for Campo Band of Kumeyaay Indians', Cahuilla Band of Indians', and Ramona Band of Cahuilla Indians' lands. Therefore, we excluded these lands from critical habitat under section 4(b)(2) of the Act. See responses to tribal comments above and the ''**Application of Section 4(b)(2) – Impacts to Government-To-Government Relationships With Tribes and Economics**'' section below for further discussion of these exclusions.

*Comment 47*: The BIA stated that land proposed as revised critical habitat is adjacent to the only road that allows access to and from the Ramona Band of Cahuilla Indians' Reservation. The road is critical to the health and safety of the Ramona Band of Cahuilla Indians and designating critical habitat adjacent to the tribe's only access to and from the Ramona Indian Reservation could potentially affect a proposed project to pave the existing dirt road, thus making it more usable for tribal members and health and safety service responders (such as Riverside County Sheriff and local and regional fire departments). They stated a delay in the project or denial of permits to build the project as a result of designating lands adjacent to the road as revised critical habitat could cost the tribe more than $1 million already allocated to build the project. Over the life of the road, the tribe believes they would have to spend hundreds of thousands more dollars to maintain the road if it is not paved.

*Our Response*: We do not anticipate any additional burden to the Ramona Band of Cahuilla Indians due to the designation of Forest Service lands adjacent to tribal lands (see response to comment 39 above).

*Comment 48*: With regard to the Ramona Band of Cahuilla Indians, the BIA specifically stated that designating lands adjacent to or near Ramona and

Cahuilla tribal lands within the Western Riverside County MSHCP plan area would violate the MSHCP because the HCP has already delineated critical habitat for the Quino checkerspot butterfly and adequately provides for the survival and recovery of the subspecies. The BIA believes that language in section 6.9 of the Western Riverside County MSHCP (Dudek and Associates 2003) and section 14.10 of the IA means no critical habitat for the Quino checkerspot butterfly should be designated in the Western Riverside County MSHCP plan area.

*Our Response*: The delineation of critical habitat is outside the scope of the section 10(a)(1)(B) permitting process under the Act, and the Western Riverside County MSHCP did not delineate critical habitat for the Quino checkerspot butterfly. In addition, contrary to BIA's assertion, the IA does not preclude the designation of critical habitat within the Western Riverside County MSHCP plan area. In our section 4(b)(2) exclusion analysis for lands within the Western Riverside County MSHCP plan area, we fully considered the conservation benefits provided by the Western Riverside County MSHCP to the Quino checkerspot butterfly, and we excluded all the lands in Units 1 through 6 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP from this critical habitat designation (see response to comment 26 above for further discussion).

*Comment 49*: The Department of the Navy (Navy) believes that designation of critical habitat at the La Posta Mountain Warfare Training Facility (La Posta Facility) would result in unacceptable delays in construction of facilities needed to support mission critical training and other missions related to national security. The Navy requested exclusion of 2,573 ac (1,041 ha) of land associated with the La Posta Facility under the Act based on the impact to national security should these lands be designated (''FY04 NDAA Section 318, National Security Exclusion from Critical Habitat Designation'').

*Our Response*: We evaluated the impacts of revised critical habitat designation to national security. As explained in our response to comment 25 above, 50 CFR 424.19 states the Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned. We determined the benefits of excluding the La Posta Facility lands outweigh the benefits of including these lands in this final revised critical habitat designation. Further, we determined this exclusion will not result in extinction of the Quino checkerspot butterfly. See the ''**Application of Section 4(b)(2) – Impacts to National Security**'' section below for a more detailed discussion.

*Comment 50*: The Navy stated it was opposed to critical habitat designation at the La Posta Facility because the Navy is actively conserving the Quino checkerspot butterfly to fulfill its obligations under section 7(a)(1) of the Act, 16 U.S.C. 1536. Resource conservation efforts include the recently revised and updated Naval Base Coronado Integrated Natural Resources Management Plan (INRMP), developing a comprehensive Habitat Enhancement Plan, and purchasing land that conserves contiguous Quino checkerspot butterfly habitat (including approximately 138 ac (55.8 ha) of proposed revised critical habitat).

*Our Response*: In our exclusion analysis, we evaluated the conservation measures provided by the Navy. Existing conservation measures minimize the benefits of inclusion, but the benefits of exclusion must outweigh the benefits of inclusion, and a determination that exclusion would not result in the extinction of the subspecies must be made before we can exclude lands from a final revised critical habitat designation. Although the Navy is implementing conservation measures for the Quino checkerspot butterfly, and the updated INRMP is finalized (Navy 2008, pp. 1–2), the Service has not yet approved the updated INRMP. However, as stated above in response to comment 49, we excluded all lands associated with the La Posta Facility from this final revised critical habitat designation based on impacts to national security (see ''**Application of Section 4(b)(2)—Impacts to National Security**'' section below). We appreciate all of the Navy's efforts to conserve the Quino checkerspot butterfly and its habitat on Navy lands and will continue to work cooperatively with the Navy for resource conservation.

*Comment 51*: The Department of the Air Force (Air Force) requested the San Diego Air Force Space Surveillance Station (Surveillance Station) be excluded from critical habitat for three reasons. First, the Air Force believes that conservation of the Quino checkerspot butterfly will be assured because an INRMP is currently being prepared in coordination with the Service and the California Department of Fish and Game (CDFG). The Air Force stated that it must implement the INRMP in accordance with the Sikes Act 16 USC 670(a), and must comply with the Act to minimize modification of potentially suitable habitat. Second, the Air Force requested the Surveillance Station be excluded from critical habitat because the station is within currently designated critical habitat, and the Service has already consulted with the Air Force regarding all current and foreseen activities, including issuance of a biological opinion concluding that the Air Force is not likely to destroy or adversely modify critical habitat. Finally, the Air Force believes critical habitat designation would limit the amount of natural infrastructure available for ongoing and future mission execution and training needed for national security. The Air Force stated that short-notice mission-critical activities not previously analyzed may be delayed in order to conduct consultations under section 7(a)(2) of the Act.

*Our Response*: In our exclusion analysis, we evaluated the conservation measures provided by the Air Force. Existing conservation measures can minimize the benefits of inclusion, but the benefits of exclusion must outweigh the benefits of inclusion and a determination that exclusion would not result in the extinction of the subspecies must be made before we can exclude lands from a final critical habitat designation.

Although conservation measures are being implemented for Quino checkerspot butterfly, the Surveillance Station INRMP is not yet finalized, and implementation of the identified conservation measures does not significantly minimize the conservation benefits of including these lands in the critical habitat designation. However, we excluded all lands associated with the Surveillance Station from this final revised critical habitat designation based on impacts to national security (see ''**Application of Section 4(b)(2)—Impacts to National Security**'' section below). We appreciate all of the Air Force's efforts to conserve the Quino checkerspot butterfly and its habitat on its lands and will continue to work cooperatively with them in the future for resource conservation.

**Summary of Changes From Previously Designated and Proposed Revised Critical Habitat**

We designated approximately 171,605 ac (69,440 ha) of critical habitat for the Quino checkerspot butterfly in 4 units on April 15, 2002 (67 FR 18356). We

proposed to revise this designation to approximately 98,487 ac (39,857 ha) in 10 units on January 17, 2008 (73 FR 3328). This final revised critical habitat designation includes approximately 62,125 ac (25,141 ha) in 10 units, after excluding Unit 1 and portions of Units 2 through 9 (approximately 36,270 ac (14,678 ha)) based on consideration of economic, national security, and other relevant impacts. All land designated as critical habitat in this final revised rule was proposed in the 2008 proposed revised rule. Changes between this designation and the 2002 designation, as well as from the 2008 proposed revisions, are described below.

The areas identified in this final revised rule constitute revisions of areas designated as critical habitat for the Quino checkerspot butterfly on April 15, 2002 (67 FR 18356; Figure 1). This final revised critical habitat designation includes approximately 62,125 ac (25,141 ha) of land in Riverside and San Diego Counties, California. Table 1 and Figures 1a and 1b below outline differences between the 2002 final critical habitat rule, the 2008 proposed revisions to the critical habitat designation, and this final revised critical habitat designation for the Quino checkerspot butterfly.

*Summary of Changes From the 2002 Designation*

Of the 171,605 ac (69,440 ha) of land included in the 2002 final critical habitat rule, approximately 62,125 ac (25,141 ha) are included in this final revised critical habitat designation (Figures 1a and 1b). For a detailed discussion of the changes between the 2002 final critical habitat rule and the 2008 proposed revision, please refer to the ''**Summary of Changes From Previously Designated Critical Habitat**'' section in the proposed rule (73 FR 3328; January 17, 2008). The most significant changes from the 2002 final rule to the 2008 proposed revision are illustrated in Figures 1a and 1b and Table 1 below and include:

(1) In the 2002 critical habitat designation (67 FR 18356; April 15, 2002), we based our criteria on the reasoning in the recovery plan (Service 2003a, p. v) that habitat areas supporting all occurrence complexes and habitat areas that facilitate landscape connectivity or otherwise play a significant role in maintaining population resilience are essential to the long-term conservation of the subspecies. In this revision to the critical habitat designation, our underlying reasoning has not changed; however, our revised Criteria Used to Identify Critical Habitat are based on new scientific data not available when critical habitat was designated on April 15, 2002 (67 FR 18356) or when the recovery plan was published (Service 2003a). Application of new data and updated occurrence information described in the ''**Background**'' section above resulted in the identification of different, and in most cases more specific, habitat areas meeting the definition of critical habitat than were identified in the 2002 final critical habitat rule. This resulted in a reduced total acreage of areas that meet the definition of critical habitat for this subspecies. The large amount of new habitat and distribution information resulted in refined population distribution knowledge and identification of three new core occurrence complexes (one new occurrence complex, two status changes; see ''**Background**'' section above). These revisions capture habitat areas adequate to ensure the long-term conservation of this subspecies based on our current knowledge of its life history and ecological needs as described in the ''**Background**'' section above, and ''**Primary Constituent Elements**'' section below. The new criteria capture areas on the periphery of the subspecies' range and in atypical environments considered important to this subspecies for adaptation to changing climatic and environmental conditions different than those identified in the 2002 critical habitat designation. For example, the Bautista Unit (including 3 non-core occurrence complexes and habitat not known to be occupied) adequately incorporates habitat in the San Jacinto foothills at the northern edge of the subspecies' range. Consistent with the recovery strategy outlined in the Recovery Plan (Service 2003a, pp. 71–86), the new criteria focused on core occurrence complex habitat-based population distributions designed to capture all habitats likely to support resilient metapopulations, including those likely to support local source or mainland populations (also called subpopulations) and movement areas between habitat patches required for metapopulation resilience (see Service 2003a pp. 163, 165–166 for term definitions). We believe the proposed revised critical habitat units, based on the best scientific data currently available regarding core occurrence complexes and associated habitat distributions, are adequate to ensure the long-term conservation of the subspecies and accurately capture the areas meeting the definition of critical habitat for the Quino checkerspot butterfly. Please see the ''Criteria Used to Identify Critical Habitat'' section below for a detailed discussion.

(2) Data collected since 2002 indicates that Unit 7 (Bautista) provide the function that the more isolated Brown Canyon subunit of formerly designated Unit 2 (67 FR 18356; April 15, 2002; 50 CFR 17.95(i)) previously was thought to provide. In 2002, the Brown Canyon non-core occurrence complex was believed to represent the primary venue for range expansion of the species resulting from environmental changes due to changing climate patterns. Further, the resiliency of this population was believed to have been preserved by the insulation provided by surrounding hilly terrain and publicly owned lands. Information obtained since 2002 indicates the population serving these functions is represented by the Bautista Road Core Occurrence Complex, and the Brown Canyon occurrence complex does not have the characteristics of a resilient core population. Therefore, the Brown Canyon subunit is no longer considered essential.

(3) The 2002 critical habitat designation (FR 18356; April 15, 2002) in Riverside County consisted of two units that included almost all known non-core occurrence complexes, areas connecting those occurrence complexes, and habitat within the Lake Mathews/Estelle Mountain Reserve associated with the ''Lake Mathews Population Site'' described in the recovery plan (Service 2003a, p. 77). We considered, but did not include any of the 5,765 ha (14,250 ac) of habitat in northwest Riverside County corresponding with current Unit 1 (67 FR 18356; April 15, 2002; 50 CFR 17.95(i)) associated with the Harford Springs (non-core) Occurrence Complex and the Lake Mathews/Estelle Mountain Reserve. Data collected since we designated critical habitat on April 15, 2002 (67 FR 18356), indicate this area is no longer likely to support the features essential to the conservation of the subspecies, and that it is not essential for conservation of the subspecies. Most of the habitat associated with the Harford Springs (non-core) Occurrence Complex (designated as Unit 1 in 2002) is functionally isolated from occupied areas or has subsequently been developed, and this non-core occurrence complex has been extirpated. We considered but did not include portions of habitat within currently designated Unit 2 (67 FR 18356; April 15, 2002; 50 CFR 17.95(i)) associated with the Domenigoni Valley (Service 2003a, p. 39), Brown Canyon, Rocky Ridge, Billygoat Mountain, Dameron Valley, Oak Grove (Service

2003a, p. 41), and Spring Canyon non-core occurrence complexes in Riverside County identified in the recovery plan (Service 2003a, p. 44; current Unit 2). Consistent with the recovery strategy outlined in the Recovery Plan (Service 2003a, pp. 71–86), we believe habitat captured by the expanded core occurrence complexes and the criteria that included additional habitat within 0.6 mi (1 km) of the mapped core occurrence complex areas (see ''Criteria Used to Identify Critical Habitat Section'' below) provides adequate landscape connectivity for conservation of the subspecies, and adequately captures areas that otherwise play a significant role in maintaining metapopulation viability.

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Figure 1a.
Geographic Comparison Map of Areas Designated as Critical Habitat Land in Riverside County for the Quino Checkerspot Butterfly on April 15, 2002 (67 FR 18356) and the Final Revision 2009

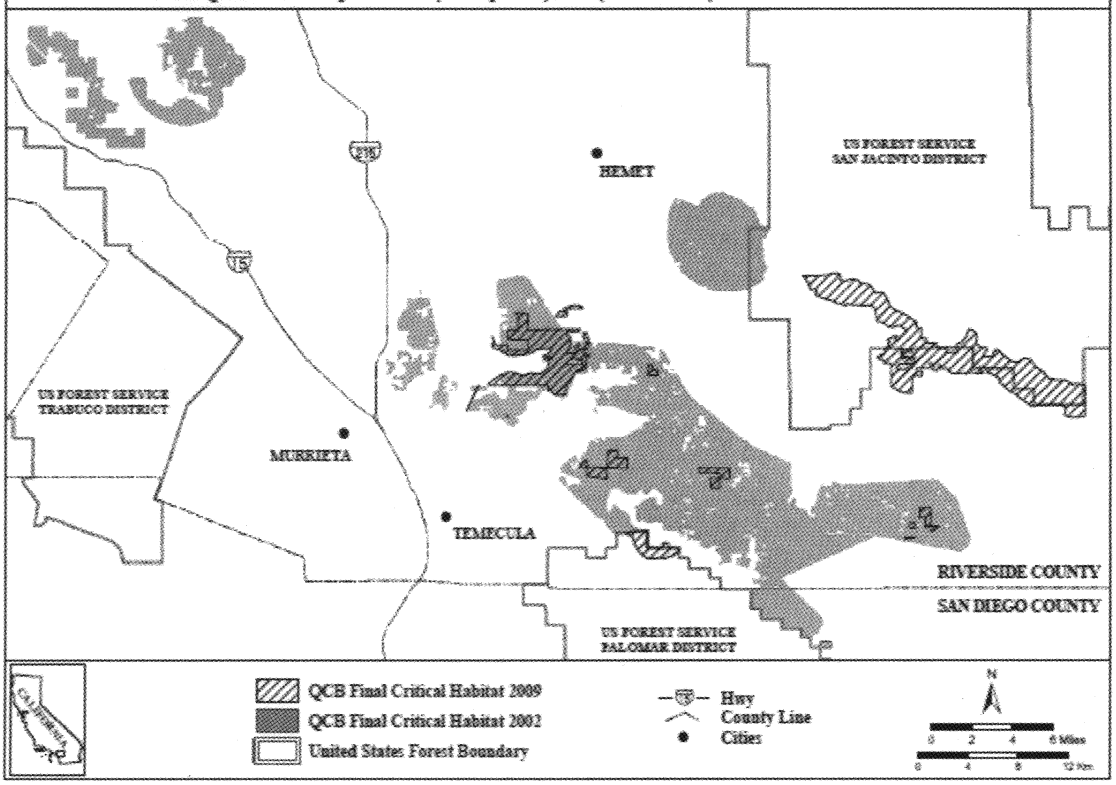

Figure 1b.
Geographic Comparison Map of Areas Designated as Critical Habitat Land in San Diego County for the Quino Checkerspot Butterfly on April 15, 2002 (67 FR 18356) and the Final Revision 2009

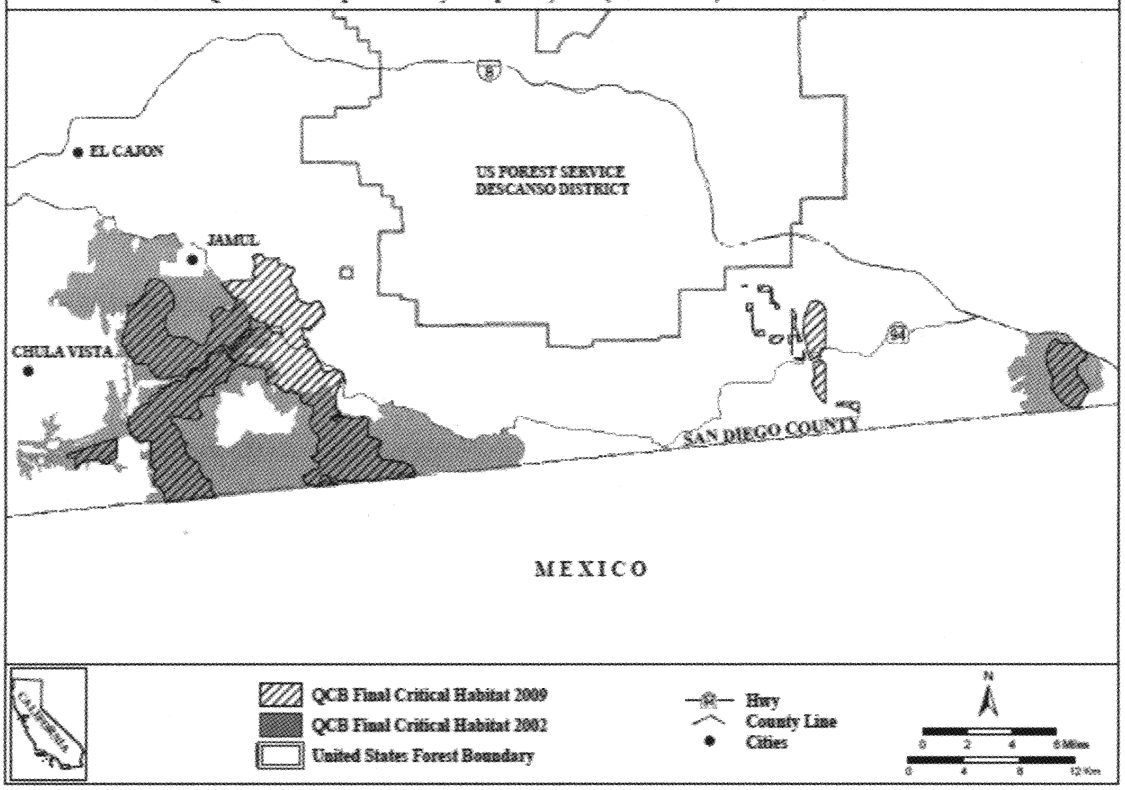


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TABLE 1. CHANGES BETWEEN THE APRIL 15, 2002, QUINO CHECKERSPOT BUTTERFLY CRITICAL HABITAT DESIGNATION; THE JANUARY 17, 2008, PROPOSED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE.

| Critical Habitat Unit in this Final Rule | County | Recovery Plan occurrence complexes [1] (place names) | 2002 Designation of Critical Habitat and ac (ha) [2] | 2008 Proposed Revisions to the Critical Habitat Designation and ac (ha) [3] | 2009 Final Revised Critical Habitat Designation and ac (ha) |
|---|---|---|---|---|---|
| 1. Warm Springs | Riverside | Warm Springs Creek and Warm Springs Creek North | Majority designated in Unit 2; 0 (0) | Included as Unit 1; 2,684 (1,086) | Entire unit excluded |
| 2. Skinner/ Johnson | Riverside | (Lake) Skinner/ Johnson (Ranch) | Partially designated in Unit 2; 4,705 (1,904) | Included as Unit 2; 12,030 (4,869) | Partially designated in Unit 2; 5,443 (2,203), partially excluded, 6,560 (2,655) |
| 3. Sage | Riverside | (Community of) Sage and San Ignacio (Ridge) | Majority designated in Unit 2; 123 (50) | Included as Unit 3; 2,692 (1,090) | Partially designated in Unit 3; 123 ac (50 ha), partially excluded, 2,569 ac (1,040 ha) |
| 4. Wilson Valley | | Wilson Valley | Designated in Unit 2 463 (187) | Included as Unit 4; 4,813 (1,948) | Partially designated in Unit 4; 463 (187), partially excluded, 4,350 (1,760 ha) |
| 5. Vail Lake/Oak Mountain | Riverside | Vail Lake, Pauba Valley, and (Communities of) Butterfield/ Radec | Majority designated in Unit 2; 819 (332) | Included as Unit 5; 8,187 (3,313) | Partially designated in Unit 5; 1,788 (724), partially excluded, 6,398 (2,589) |

TABLE 1. CHANGES BETWEEN THE APRIL 15, 2002, QUINO CHECKERSPOT BUTTERFLY CRITICAL HABITAT DESIGNATION; THE JANUARY 17, 2008, PROPOSED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE.—Continued

| Critical Habitat Unit in this Final Rule | County | Recovery Plan occurrence complexes [1] (place names) | 2002 Designation of Critical Habitat and ac (ha) [2] | 2008 Proposed Revisions to the Critical Habitat Designation and ac (ha) [3] | 2009 Final Revised Critical Habitat Designation and ac (ha) |
|---|---|---|---|---|---|
| 6. Tule Peak | Riverside | Tule Peak (Road), Southwest Cahuilla (Reservation), and Silverado (Ranch) | Majority designated in Unit 2; 15 (6) | Included as Unit 6; 6,433 (2,603) | Partially designated in Unit 6; 326 (132), partially excluded, 6,106 (2,471) |
| 7. Bautista | Riverside | Bautista Road, Pine Meadow, Lookout Mountain, and 3Horse Creek | Not essential | Included as Unit 7; 14,014 (5,671) | Partially designated in Unit 7; 13,880 (5,617), partially excluded, 79 (32) |
| 8. Otay | San Diego | Otay Valley, West Otay Mountain, Otay Lakes/ Rancho Jamul, Proctor Valley, Marron Valley, (Community of) Dulzura, and Honey Springs | Majority designated in Unit 3; 25,325 (10,249) | Included as Unit 8; 36,726 (14,863) | Partially designated in Unit 8; 34,941 (14,140), partially excluded, 1,782 (721) |
| 9. La Posta/Campo | San Diego | [3](Communities of) La Posta/ Campo | Not essential | Included as Unit 9; 8,393 (3,397) | Partially designated in Unit 9; 2,647 (1,071), partially excluded, 5,740 (2,323) |
| 10. Jacumba | San Diego | Jacumba | Designated as part of Unit 4; 2,514 (1,017) | Included as Unit 10; 2,514 (1,017) | Designated as Unit 10; 2,514 (1,017) |
| [4]Brown Canyon Subunit | Riverside | Brown Canyon | Designated subunit of Unit 2; 0 (0) | Not essential; not proposed | Determined not to be essential |
| [5]Lake Matthews | Riverside | Harford Springs (Park), [6]Lake Matthews Population Site | Unit 1; 0(0) | Not essential; not proposed | Determined not to be essential |
| [7]Otay | San Diego | (National Wildlife Refuge) NWR Rancho Jamul, NWR Los Montanas, Hidden Valley, (Community of) Jamul, West Otay Mesa, Barret Junction, (City of) Tecate (border area) | Designated in Unit 3; 0 (0) | Not essential; not proposed | Determined not to be essential |
| Totals | | | 33,964 (13,745) | 98,487 (39,857) | 62,125 (25,141) designated 36,270 (14,678) excluded |

1 All occurrence complexes in proposed revisions to critical habitat are now part of a core occurrence complex, except Pine Meadow, Lookout Mountain, and Horse Creek. The geographic analysis of occurrence complexes in this table is based on habitat-based population distributions described in this final revised critical habitat rule.
2 Area designated in this rule that was also included in 2002 designated critical habitat units (67 FR 18356).
3 New occurrence complexes described in the 2008 proposed revised designation (73 FR 3328) that were not described in the Recovery Plan.
4The Brown Canyon subunit in the 2002 final designation was not included in proposed revisions to critical habitat.
5 The Lake Matthews Unit in the 2002 final designation was not included in proposed revisions to critical habitat.
6 A ''historically occupied population site'' described in the Recovery Plan (not an occurrence complex).
7 The Otay Unit was Unit 3 in the 2002 final critical habitat rule (67 FR 18356). This row describes Recovery Plan occurrence complexes not included in Unit 8 of the proposed revisions to critical habitat.

*Summary of Changes From the 2008 Proposed Rule To Revise Critical Habitat*

The most significant changes from the 2008 proposed revision to this final revised rule are illustrated in Table 1 above and include:

(1) In the proposed revised rule, we considered lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP covered by the HCP for exclusion under section 4(b)(2) of the Act. In this final revised rule, we determined the benefits of exclusion outweigh the benefits of inclusion of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6, and determined exclusion of these lands will not result in extinction of the species. Therefore, we excluded approximately 27,465 ac (11,115 ha) of these lands under section

4(b)(2) of the Act. We determined that the benefits of inclusion outweigh the benefits of exclusion for Unit 7. Therefore, we included all lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 in this final designation. For a complete discussion of the benefits of inclusion and exclusion see ''**Exclusions Under Section 4(b)(2) of the Act**'' section below.

(2) In the proposed revised rule, we considered all lands covered by the Chula Vista Subarea Plan for exclusion under section 4(b)(2) of the Act. We determined the benefits of exclusion outweigh the benefits of inclusion of these lands and exclusion will not result in extinction of the species. Therefore, we excluded approximately 1,673 ac (677 ha) of land covered by the Chula Vista Subarea Plan under section 4(b)(2) of the Act (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

(3) In the notice of availability for the DEA published in the **Federal Register** on December 19, 2008 (73 FR 77568), we announced we were considering exclusion of the San Diego Air Force Space Surveillance Station (SD Surveillance Station; approximately 109 ac (44 ha) within Unit 8) and the La Posta Mountain Warfare Training Facility (La Posta Facility; 2,463 ac (997 ha) within Unit 9) from critical habitat designation for reasons of national security. We determined the benefits of exclusion outweigh the benefits of inclusion for these lands and exclusion of these lands will not result in extinction of the species. Therefore, we excluded approximately 2,572 ac (1041 ha) of Department of Defense lands in Units 8 and 9 for reasons of national security under section 4(b)(2) of the Act (see ''**Application of Section 4(b)(2) – Impacts to National Security**'' section below).

(4) In the notice of availability for the DEA published in the **Federal Register** on December 19, 2008 (73 FR 77568), we announced we were considering exclusion of approximately 1,203 ac (487 ha) of the Cahuilla Band of Indians' land within Unit 6, approximately 79 ac (32 ha) of Ramona Band of Cahuilla Indians' land within Unit 7, and approximately 3,167 ac (1,282 ha) of Campo Band of Kumeyaay Indians' land within Unit 9 for economic reasons. We determined the benefits of exclusion outweigh the benefits of inclusion of these tribal lands and exclusion will not result in extinction of the species. Therefore, we excluded approximately 1,203 ac (487 ha) of tribal lands in Unit 6, approximately 79 ac (32 ha) in Unit 7, and approximately 3,167 ac (1,282 ha) in Unit 9 for economic reasons under section 4(b)(2) of the Act (see ''**Application of Section 4(b)(2) – Impacts to Government-To-Government Relationships With Tribes and Economics** '' section below).

(5) In 2008, one expert documented Quino checkerspot butterfly oviposition (egg laying) and larval feeding on a new species of host plant at several locations in Unit 6 (Pratt 2008a, p. 1). Please see ''**Background**'' section above for a complete discussion of this new information. As a result of these documented observations, we added *Collinsia concolor* to the list of host plants considered as a PCE (see ''**Background**'' section for additional details).

(6) When final critical habitat maps are being prepared with exclusions based on ownership data, this exercise often leaves small linear polygons of designated critical habitat that in-and-of themselves serve no logical regulatory or biological purpose. Initial maps are based on habitat features only; however, exclusions are based on artificial boundaries created by humans, therefore resulting in narrow ''sliver'' artifacts or very small polygons of non-excluded area once excluded areas are removed. Therefore, the sum of the total areas designated and excluded is slightly reduced in this final revised critical habitat designation compared to the size of the total proposed revised designation area estimate due to removal of small linear ownership artifacts.

(7) A number of comments we received suggested editorial changes and technical corrections to sections of the rule pertaining to the **Background** and Criteria Used To Identify Critical Habitat sections of our proposed revised rule. These changes were recommended to improve clarity, include additional information, and correct minor errors. They were incorporated into this final revised rule where appropriate.

## 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 or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time 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 considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the PCEs laid out in the appropriate quantity and spatial arrangement essential to the

conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the Recovery Plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that 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. 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 we and other Federal agencies implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by section 9 of the Act and the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

**Primary Constituent Elements (PCEs)**

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider 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 essential to the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the PCEs for the Quino checkerspot butterfly from its biological needs as described below and in proposed revisions to critical habitat published in the **Federal Register** on January 17, 2008 (73 FR 3328).

*Space for Individual and Population Growth and for Normal Behavior*

Habitat for the Quino checkerspot butterfly is characterized by patchy shrub or small tree landscapes with openings of several meters between large plants, or a landscape of open swales alternating with dense patches of shrubs (Mattoni *et al.* 1997, p. 112); such habitats are often collectively termed ''scrublands.'' Quino checkerspot butterflies will frequently perch on vegetation or other substrates to mate or bask, and require open areas to facilitate movement (Service 2003a, pp. 10–11).

*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*

Quino checkerspot butterflies are exothermic (cold-blooded) and therefore require an external heat source to increase their metabolic rate to levels needed for normal growth and behavior. Within open, woody-canopy communities, larvae seek microclimates with high solar exposure for basking to speed their growth rate (Weiss *et al.* 1987, p. 161; Weiss *et al.* 1988, p. 1487; Osborne and Redak 2000, p. 113; Service 2003a, p. 20). Like most butterflies, adult Quino checkerspot butterflies frequently bask and remain in open-canopy areas, using air temperature and sunshine to increase their body temperature to the level required for normal active behavior (Service 2003a, p. 18).

Adult butterflies will only lay eggs on species they recognize as host plants. Quino checkerspot butterfly oviposition (egg deposition) has been most often documented on *Plantago erecta, Plantago patagonica*, and *Anterrhinum coulterianum* (Service 2003a, pp. 14–18). In 2008, oviposition and larval development were recorded for the first time on *Collinsia concolor*; on numerous individual plants and at multiple locations in Riverside County (Pratt 2008a p. 1; 2008b p. 1; 2008c p. 1; 2008e, p. 1). Although *C. concolor* commonly occurs in habitats with *P. erecta, P. patagonica*, and *A. coulterianum*, (Pratt 2001, pp. 42–43; Anderson 2008, pp. 2, 3), this plant species is typically found in cooler and moister micro-habitats on north-facing slopes and in the shade compared to where the other host plant species grow (Pratt 2001, p. 40; Pratt 2008b, p. 1). Please see ''**Background**'' section above for a complete discussion of this new information.

Newly hatched pre-diapause larvae cannot move more than a few centimeters during the first two instars (development stages), restricting their development during this stage to the individual host plant on which their mother deposited eggs (the primary host plant species). Older pre-diapause larvae usually wander independently in search of food and may switch to feeding on a secondary host plant (Service 2003a, p. 7). All known species of host plant (see species listed above) may serve as primary or secondary host plants, depending on location and environmental conditions (Service 2003a, p. 17). Quino checkerspot butterfly egg clusters or pre-diapause larval clusters are also documented in the field on *Cordylanthus rigidus*

(thread-leaved bird's beak) and *Castilleja exserta* (purple owl's-clover) (Service 2003a, pp. 14–18). However, use of *C. rigidus* and *C. exserta* is rare, and these species alone are not believed to be sufficient to support Quino checkerspot butterfly breeding; therefore, other species of host plant must co-exist with these species for habitat to support breeding (Service 2003a, pp. 16–17).

It is not possible to determine habitat suitability based on standing host plant densities. Estimates exist for densities of *Plantago erecta* required for larval development (Service 2003a, pp. 22–23); however, it is not always possible in a given year to determine typical host plant densities because germinating host plants may be entirely consumed by larvae; or because seeds may not germinate and larvae may return to diapause when precipitation levels are below-average (Service 2003a, p. 23). These principles apply to all host plant species to some extent; therefore, any host plants detected in habitat appearing otherwise suitable should be considered an indication of habitat suitability.

The physical structure of flowers is the primary factor that determines nectar source use. Adult checkerspot butterflies of the genus *Euphydryas* have a short tongue, approximately 0.43 inch (in) (11 millimeters (mm)) in length (Pratt 2007a, p. 1), and typically cannot feed on flowers that have deep corolla tubes or flowers evolved to open by bees (Service 2003a, p. 19). Adults may nectar on flowers with a corolla length nearly a centimeter longer than their proboscis (0.59 to 1.10 in (15 to 28 mm)), like *Linanthus androsaceus* (Murphy 1984, p. 114; Hickman 1993, p. 842), but they are not likely to prefer such species (Murphy 1984, p. 114). Edith's checkerspot butterflies prefer flowers with a platform-like surface on which they can remain upright while feeding (Service 2003a, p. 19). Examples of flowers Quino checkerspot butterflies frequently take nectar from include *Lomatium* spp. (lomatium), *Muilla* spp. (goldenstar), *Amsinckia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Eriodictyon* spp. (yerba santa), *Chaenactis glabriuscula* (yellow pincushion), *Ericameria linearifolia* (interior goldenbush), and *Plagiobothrys* and *Cryptantha* spp. (popcorn flowers) (Service 2003a, p. 19; see Comment 7 and our response in the ''Peer Reviewer Comments'' section above). Therefore, flowers with a corolla tube greater than 0.43 in (11 mm) are not likely to be used as nectar sources by the Quino checkerspot butterfly.

White and Levin (1981, pp. 350, 351) found that the average distance adult Quino checkerspot butterflies moved within habitat patches ranged from 173 ft (53 m) to 305 ft (93 m) in 1973 and 1972, respectively. Although butterflies were observed moving from larval host plants at distances greater than 656 ft (200 m) (1981, p. 349), it is unlikely that nectar sources greater than this distance would regularly be used by the subspecies because 656 ft (200 m) is more than double the average recapture distance in 1972, and almost 4 times the average distance in 1973 recorded by White and Levin (1981, p. 349).

*Cover or Shelter*

Quino checkerspot butterfly larvae require sheltered sites for diapause (Service 2003a, p. 8), and adults typically roost in or below shrubs overnight and during adverse weather conditions (Service 2003a, p. 10). A pilot laboratory study (Pratt 2006, p. 9) and larval distribution observations (Osborne and Redak 2000, p. 113) indicate the Quino checkerspot butterfly larvae prefer to diapause in or near the base of native shrubs, such as *Eriogonum fasciculatum*. Larvae can repeat diapause for multiple years (Service 2003a, p. 8); therefore, surveys for adults during drought years may not detect occupancy where it exists in areas containing diapause sites. Captive rearing and observation of the Quino checkerspot butterfly larvae indicate that repeated diapause is relatively common (over 50 percent likelihood for the first year) (Pratt 2006, p. 10), and larvae can re-enter diapause (Pratt 2007a, pp. 10–13). Therefore, suitable habitat requires low-lying shrubs, such as *E. fasciculatum*, that provide shelter for adults and larvae.

*Sites for Breeding, Reproduction, or Development of Offspring*

In Edith's checkerspot butterflies, the tendencies of females to move uphill and males to defend hilltops (''hilltopping behavior'') increase the likelihood of male and female butterflies finding each other to mate during years of low adult density (Baughman and Murphy 1988, p. 119; Ehrlich and Wheye 1988, pp. 460–461). Males defend hilltops because they are likely to encounter virgin females at these locations (Baughman and Murphy 1988, p. 119; Ehrlich and Wheye 1988, pp. 460–461; Mattoni *et al.* 1997, p. 109). As a result, higher ground serves as a ''visual beacon'' to enhance mating success.

*Primary Constituent Elements for the Quino Checkerspot Butterfly*

For the geographical areas occupied by the Quino checkerspot butterfly at the time of listing, we must identify the essential physical or biological features that may require special management considerations or protection. Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies, we determined the Quino checkerspot butterfly's PCEs are:

(1) Open areas within scrublands at least 21.5 square feet ($ft^2$) (2 square meters ($m^2$)) in size that:

(A) Contain no woody canopy cover; and

(B) Contain one or more of the host plants *Plantago erecta, Plantago patagonica*, *Antirrhinum coulterianum*, or *Collinsia concolor* used for Quino checkerspot butterfly growth, reproduction, and feeding; or

(C) Contain one or more of the host plants *Cordylanthus rigidus* or *Castilleja exserta* that are within 328 ft (100 m) of the host plants listed in (B) above; or

(D) Contain flowering plants with a corolla tube less than or equal to 0.43 in (11 mm) used for Quino checkerspot butterfly feeding;

(2) Open scrubland areas and vegetation within 656 ft (200 m) of the open canopy areas (PCE 1) used for movement and basking; and

(3) Hilltops or ridges within scrublands that contain an open, woody-canopy area at least 21.5 $ft^2$ (2 $m^2$) in size used for Quino checkerspot butterfly mating (hilltopping behavior) and are contiguous with (but not otherwise included in) open areas and natural vegetation described in PCEs 1 and 2 above.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied at the time of listing contain features essential to the conservation of the subspecies that may require special management considerations or protection.

When the Quino checkerspot butterfly was listed on January 16, 1997 (62 FR 2313), the primary threats to the subspecies were:

(1) Reduction and fragmentation of habitat by urban and agricultural development and recreational activities,

(2) over-collection,

(3) vandalism,

(4) fire, and

(5) drought.

Additional threats to this subspecies identified in the April 15, 2002, final

designation of critical habitat (67 FR 18356) include:

(1) Trash dumping,

(2) nitrogen deposition,

(3) elevated atmospheric carbon dioxide concentrations, and

(4) climate change.

Current threats to the subspecies and management needs were described in detail in the Recovery Plan (Service 2003a, pp. 55–65); including:

(1) Loss and fragmentation of habitat and landscape connectivity due to development,

(2) invasion by nonnative plants,

(3) off-road vehicle activity,

(4) grazing,

(5) fire,

(6) enhanced soil nitrogen,

(7) increasing atmospheric carbon dioxide concentration, and

(8) climate change.

Scientific research indicates all threats individually and interactively cause loss or reduced availability of Quino checkerspot butterfly host plants, nectar sources, and suitable areas for necessary behaviors (e.g., mating, basking, hilltopping) (Service 2003a, pp. 55–65). For example, increased atmospheric carbon dioxide concentration resulted in approximately 30 percent loss in seed production of *Plantago lanceolata* (Jablonski *et al.* 2002, p. 14), and increased temperatures caused approximately 5 percent shorter reproductive duration (Sherry *et al.* 2007, p. 200). These results indicate density and phenological availability of *Plantago spp.* to herbivores under current and predicted climate and atmospheric conditions are, or will be, reduced relative to historical conditions (Service 2003a, pp. 62–65). Host plant densities and availability are also reduced by nonnative plant invasion, which is further exacerbated by loss and fragmentation of habitat, off-road vehicle activity, enhanced soil nitrogen, and other sources of habitat-disturbance.

Management needs and actions recommended in the Recovery Plan that may be required to protect and maintain the PCEs for the Quino checkerspot butterfly include:

(1) Reestablishment and maintenance of habitat and landscape connectivity within and between populations (Service 2003a, pp. 57, 96–101);

(2) habitat restoration and control of invasive nonnative species (Service 2003, pp. 58, 96–101, 146–159);

(3) monitoring of ongoing habitat loss and nonnative plant invasion (Service 2003a, p. 106);

(4) phased replacement of grazing with nonnative invasive plant control (Service 2003, pp. 60, 101–102);

(5) carefully controlled burn experiments to assess effectiveness for control of nonnative plant invasion and protection of PCEs from wildfire destruction (Service 2003, p. 61);

(6) reduction of local nitrogen emissions from sources such as high-traffic roads (Service 2003a, p. 62);

(7) management of off-road vehicle activity (Service 2003a, pp. 59, 146–159), including outreach and partnerships with local off-road vehicle clubs and organizations (Service 2003a, p. 105);

(8) reduction of trash dumping in habitat (Service 2003a, p. 109); and

(9) prudent design of managed habitats to include landscape connectivity (suitable habitat connectivity) and ecological connectivity (connectivity of wildlands that may not currently include habitat) (Service 2003a, pp. 65, 96).

## Criteria Used To Identify Critical Habitat

As discussed in the Recovery Plan (Service 2003a, pp. 71–86), the recovery strategy for Quino checkerspot butterfly focuses on conserving, managing, and monitoring resilient populations. Therefore, criteria for determining habitat required to support a population should consider long-term occupancy needs as well as movement distances to include all habitat necessary to support a population. We based our critical habitat criteria on the intent of recovery criteria 1, 3, 4, and 5 (Service 2003a, p. v) that habitat areas supporting all occurrence complexes and that facilitate landscape connectivity or otherwise play a significant role in maintaining population resilience are essential to the long-term conservation of the subspecies. Our revised ''Criteria Used to Identify Critical Habitat'' are based on new scientific information not available when the recovery plan was published (Service 2003a). The large amount of new habitat and distribution information resulted in refined population distribution knowledge and identification of three new core occurrence complexes (one new occurrence complex, two status changes; see ''**Background**'' section above). The new criteria capture areas on the periphery of the subspecies' range and in atypical environments considered important to this subspecies for adaptation to changing climatic and environmental conditions different than those identified in the 2002 critical habitat designation. The new criteria focused on core occurrence complex habitat-based population distributions designed to capture all habitats likely to support resilient metapopulations, including those likely to support local source or mainland populations (also called subpopulations) and movement areas between habitat patches required for metapopulation resilience (see Service 2003a pp. 163, 165–166 for term definitions).

In order to include all habitat necessary to support populations and accommodate population distributions that may shift annually or over a greater period of time, our criteria started with Quino occurrence locations considered to be extant, and expanded habitat to include all habitat we estimated was necessary to support the core occurrence complexes (populations) associated with the observed individuals. The process we used is described below.

(1) We determined occupancy within the extant range of the Quino checkerspot butterfly. Current occupancy was determined using occurrence data from the Service GIS database and associated survey reports. Areas of extant habitat containing occurrence records from 1999 or later were considered currently occupied. Since 1997, the number of known occupied sites has increased in most areas, indicating resilient populations in areas where development pressure is relatively low. Ten years is the minimum time between historical subspecies' population density highs and lows (Service 2003a, p. 29); therefore, naturally fluctuating populations documented since 1999 are not likely to have experienced a density minimum, during which they are most vulnerable to extirpation.

(2) We determined which areas were occupied at the time of listing by comparing survey and collection information to descriptions of occupied areas in the final listing rule published on January 16, 1997 (62 FR 2313). Core occurrence complexes considered to be occupied at the time of listing were: (1) Recorded within 4 years of listing; (2) contained repeated observations of a large number of individuals (relative to all known occupied locations); and (3) if occupancy was documented post-listing, occurred not more than 4 mi (6.4 km) from other occurrence complexes known to be occupied at the time of listing. Four years is less than half the minimum time between historical subspecies' population density highs and lows (Service 2003a, p. 29) and, as stated above, where development pressure is relatively low, populations appear to be resilient. Additionally, 4 mi (6.4 km) is the maximum recorded Edith's checkerspot butterfly dispersal distance (Service 2003a, p. 12). Therefore, these parameters captured:

(1) The time required for natural population fluctuations to increase subspecies' density and occupancy detectability; (2) repeated observations indicating habitat has been occupied for several years; and (3) populations in close proximity to areas known to be occupied at the time of listing, as well as those areas likely to have been occupied (already colonized) at the time of listing.

(3) Once we determined the occupancy status of all occurrence complexes, we used the following rule set to identify areas that met the definition of critical habitat. As described in the ''**Background**'' section above, we defined core occurrence complexes as population density centers, specifically occurrence complexes where at least two of the following criteria apply: (a) 50 or more adults have been observed during a single survey; (b) immature life stages have been recorded; and (c) the area within 0.6 mi (1 km) of butterfly observation locations (occurrence complex area) was greater than 1,290 ac (522 ha). The best available scientific data indicate that focusing on protection and management of populations associated with occurrence complexes meeting these criteria can provide for the conservation of the subspecies because they are more likely to persist into the future and provide emigrants to other populations than populations associated with occurrence complexes that do not meet these criteria. We identified seven core occurrence complexes that meet the definition of critical habitat that were identified in the Recovery Plan (Warm Springs Creek, Skinner/ Johnson, Vail Lake, Sage, Wilson Valley, Tule Peak/Silverado, Otay Mountain), as well as three new core occurrence complexes (Bautista Road, La Posta/Campo, and Jacumba) (see ''**Background**'' section above).

(4) We determined lands necessary to support each of the populations associated with the 10 identified core occurrence complexes. We first delineated areas within 0.6 mi (1 km; movement radius) of occurrence records to capture habitat within reasonable flight range of each recorded adult sighting. This first criterion is the geographic area-based component of the definition of an occurrence complex described further in the Recovery Plan (Service 2003a, p. 35) and the ''**Background**'' section above. We subsequently included any contiguous habitat containing the PCEs within an occurrence complex (described in first criterion above) and within an additional 0.6 mi (1 km) of an occurrence complex. This second criterion used biological and geographic information (primarily Service GIS host plant occurrence data, vegetation layers, and satellite imagery) to capture the physical or biological features essential to the conservation of the subspecies in this area. We removed any areas within the occurrence complex that we determined did not contain the PCEs, based on the best available scientific data. In mapping all habitat within reasonable flight range of each recorded observation, combined with any additional habitat belonging to the observed individuals' population, we believe we captured habitat necessary to support each population associated with identified core occurrence complexes (the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies). This process resulted in the identification of habitat-based population distributions for each core occurrence complex that are occupied at a population distribution scale, but where detectability may vary annually.

(5) Finally, we closely examined the new Bautista Road Core Occurrence Complex and determined habitat associated with this complex is likely undersurveyed and supports a larger population distribution than is currently delineated by the habitat-based population distribution. Furthermore, we determined this core occurrence complex is at the leading edge of an ongoing upward shift in the Quino checkerspot butterfly's elevation range (see ''**Background**'' section above). Recognizing the predictions by Parmesan (1996, p. 765; 2006, pp. 647–648), Preston *et al.* (2008, pp. 2501–2505), and Seager *et al.* (2007, pp. 1181, 1183, 1184), we expect loss of lower elevation and lower latitude populations will continue in this subspecies' range as the incidence of above-average temperatures, drought conditions, and extreme weather events continue to increase (see ''**Background**'' section above; National Oceanic and Atmospheric Administration 2007). Qualitative natural history and abundance observations and documented adult and larval observations for the Quino checkerspot butterfly indicate this species has begun to colonize higher elevation habitats (see ''**Background**'' section above). Therefore, consistent with recommendations in the Recovery Plan (Service 2003a, p. 65), we delineated habitat containing the PCEs that is contiguous with the Bautista Road Core Occurrence Complex habitat-based population distribution to connect it to the habitat-based population distributions of three non-core occurrence complexes that are higher in elevation (Pine Grove, Lookout Mountain, and Horse Creek).

These three non-core occurrence complexes were all identified over the past 5 years, and we expect they will become increasingly important to Quino checkerspot butterfly conservation in the future. Therefore, inclusion of all areas into Unit 7 within the habitat-based population distributions of the Bautista Road Core Occurrence Complex, the Pine Grove, Lookout Mountain, and Horse Creek non-core occurrence complexes, and contiguous suitable habitat between these complexes, captured habitat essential for the conservation of the subspecies. This will ensure persistence of populations associated with core occurrence complexes that we believe is critical to the conservation of the Quino checkerspot butterfly. In identifying areas that meet the definition of critical habitat, we recognize the importance of including all lands necessary to support resilient core populations. As described above, we delineated habitat where occupancy is expected, but has not been documented, that connects the Bautista Road Core Occurrence Complex with three higher elevation non-core occurrence complexes. Therefore, consistent with 50 CFR 424.12(e), we included areas contiguous with the Bautista Road Core Occurrence Complex that are outside the geographical area presently occupied by the subspecies (outside of habitat-based population distributions as described above) in Unit 7 (Bautista).

When determining revisions to 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 PCEs for the Quino checkerspot butterfly. The scale of maps 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 land under them inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat rule are excluded by text in this final rule. Therefore, Federal action involving such lands would not trigger section 7 consultations with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

**Final Revised Critical Habitat Designation**

We are designating approximately 62,125 ac (25,141 ha) as critical habitat for the Quino checkerspot butterfly within 9 units, identified as Units 2 through 10 (proposed critical habitat Unit 1 is excluded in its entirety as described in the ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule). Table 2 outlines the areas included and excluded from this final revised critical habitat by land ownership. Units designated as critical habitat are discussed in detail below. The areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Quino checkerspot butterfly.

TABLE 2. CRITICAL HABITAT UNITS FOR THE QUINO CHECKERSPOT BUTTERFLY DEPICTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION BY LAND OWNERSHIP.

| Critical Habitat Unit | Land Ownership[2] | Total area proposed ac (ha) | Total area excluded ac (ha) | Total area designated ac (ha) |
|---|---|---|---|---|
| 1. Warm Springs | Local | 369 (149) | 369 (149) | |
| | Private | 2,315 (937) | 2,315 (937) | 0 |
| 2. Skinner/Johnson | Federal | 131 (53) | 0 | 131 (53) |
| | Local | 8,674 (3,510) | 3,361 (1,360) | 5,313 (2,150) |
| | State | 734 (297) | 734 (297) | 0 |
| | Private | 2465 (990) | 2,465 (990) | 0 |
| 3. Sage | Federal | 123 (50) | 0 | 123 (50) |
| | Local | 89 (36) | 89 (36) | 0 |
| | Private | 2,480 (1,004) | 2,480 (1,004) | 0 |
| 4. Wilson Valley | Federal | 463 (187) | 0 | 463 (187) |
| | Local | 1,072 (434) | 1,072 (434) | 0 |
| | Private | 3,278 (1,327) | 3,278 (1,327) | 0 |
| 5. Vail Lake/Oak Mountain | Federal | 1,788 (724) | 0 | 1,788 (724) |
| | State | 22 (9) | 22 (9) | 0 |
| | Local | 97 (39) | 97 (39) | 0 |
| | Private | 6,279 (2,541) | 6,279 (2,541) | 0 |
| 6. Tule Peak | Federal | 326 (132) | 0 | 326 (132) |
| | Cahuilla Tribe | 1,203 (487) | 1,203 (487) | 0 |
| | Local | 953 (386) | 953 (386) | 0 |
| | Private | 3,950 (1,599) | 3,950 (1,599) | 0 |
| 7. Bautista | Federal | 9,720 (3,934) | 0 | 9,720 (3,934) |
| | Ramona Tribe | 79 (32) | 79 (32) | 0 |
| | State | 102 (41) | 0 | 102 (41) |
| | Local | 46 (19) | 0 | 46 (19) |
| | Private | 4,012 (1,624) | 0 | 4,012 (1,624) |
| 8. Otay | Federal | 8,763 (3,546) | 109 (44) | 8,654 (3,502) |
| | State | 9,674 (3,915) | 35 (14) | 9,639 (3,901) |
| | Local | 5,238 (2,120) | 834 (338) | 4,404 (1,782) |
| | Private | 13,048 (5,280) | 804 (325) | 12,244 (4,955) |
| 9. La Posta/Campo | Federal | 2,927 (1,184) | 2,572 (1,040) | 355 (144) |
| | Campo Tribe | 3,167 (1,282) | 3,167 (1,282) | 0 |

TABLE 2. CRITICAL HABITAT UNITS FOR THE QUINO CHECKERSPOT BUTTERFLY DEPICTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION BY LAND OWNERSHIP.—Continued

| Critical Habitat Unit | Land Ownership[2] | Total area proposed ac (ha) | Total area excluded ac (ha) | Total area designated ac (ha) |
|---|---|---|---|---|
| | State | 0 | 0 | 6 (2) |
| | Private | 2,286 (925) | 0 | 2,286 (925) |
| 10. Jacumba | State | 351 (142) | 0 | 351 (142) |
| | Private | 2,163 (875) | 0 | 2,163 (875) |
| Total | | 98,395 (39,819) [1] | 36,270 (14,678) | 62,125 (25,141) |

1Unit totals are reduced in this final revised critical habitat designation due to removal of small linear ownership artifacts originally included in proposed revised critical habitat designation area estimates. The total area value in the proposed revised critical habitat designation was 98,487 ac (39,857 ha).

2Private = private ownership, including conserved lands managed for subspecies' recovery; Local = City- or County-owned land; Federal = Federally owned land; Cahuilla Tribe = Cahuilla Band of Indians; Ramona Tribe = Ramona Band of Cahuilla Indians; Campo Tribe = Campo Band of Kumeyaay Indians. Numbers may not sum due to rounding, and ownership totals may have changed from those reported in the proposed rule due to updated ownership data.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Quino checkerspot butterfly below. For more information about the areas excluded from critical habitat, please see the ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule.

*Unit 1: Warm Springs*

We excluded all lands in Unit 1 (approximately 2,684 ac (1,086 ha)) that we proposed as revised critical habitat that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below for a detailed discussion).

*Unit 2: Skinner/Johnson*

Unit 2 consists of approximately 5,444 ac (2,203 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta, Antirrhinum coulterianum*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 39, 41; Service GIS database). Unit 2 is located in Riverside County, north of the City of Temecula, in the vicinity of Lake Skinner. This unit includes land associated with the Skinner/Johnson Core Occurrence Complex as described in the Recovery Plan (Service 2003a, p. 79). The physical and biological features found in Unit 2 may require special management considerations or protection to minimize impacts from maintenance and recreational activities, invasion by nonnative plants, fire, enhanced soil nitrogen, and climate change.

We excluded approximately 6,560 ac (2,655 ha) that we proposed as revised critical habitat in this unit that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below for a detailed discussion).

*Unit 3: Sage*

Unit 3 consists of approximately 123 ac (50 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 41, 43; Service GIS database). Unit 3 is located in Riverside County, northeast of Temecula, in the vicinity of the community of Sage. This unit includes land associated with the Sage Core and San Ignacio Non-core Occurrence Complexes described in the Recovery Plan (Service 2003a, p. 79). New occurrence information indicates the San Ignacio Non-core Occurrence Complex should be considered part of the Sage Core Occurrence Complex (see ''**Background**'' and ''Criteria Used To Identify Critical Habitat'' sections above). The physical and biological features found in Unit 3 may require special management considerations or protection to minimize impacts from recreational activities, trash dumping, invasion by nonnative plants, fire, enhanced soil nitrogen, and climate change.

We excluded approximately 2,569 ac (1,040 ha) that we proposed as revised critical habitat in this unit that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion was based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Unit 4: Wilson Valley*

Unit 4 consists of approximately 463 ac (187 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta, P. patagonica, Antirrhinum coulterianum*, *Collinsia concolor*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 41, 43; Pratt 2008b pp. 1–2; 2008e, p. 1; Service GIS database). Unit 4 is located in Riverside County, north of SR 79, east of Oak Mountain and the City of Temecula in the vicinity of Wilson

Valley. This unit includes land associated with the Wilson Valley Core Occurrence Complex described in the Recovery Plan (Service 2003a, p. 79). The physical and biological features found in Unit 4 may require special management considerations or protection to minimize impacts from recreational activities, trash dumping, invasion by nonnative plants, fire, enhanced soil nitrogen, and climate change.

We excluded approximately 4,350 ac (1,760 ha) that we proposed as revised critical habitat in this unit that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion was based on our determination the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Unit 5: Vail Lake/Oak Mountain*

Unit 5 consists of approximately 1,788 ac (724 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta, Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 41, 43; Service GIS database). Unit 5 is located in Riverside County, north and south of SR 79, and east of Temecula within the vicinity of Oak Mountain and Vail Lake. This unit includes land associated with the Vail Lake Core Occurrence Complex and Butterfield/Radec Non-core Occurrence Complex described in the Recovery Plan (Service 2003a, p. 79). New occurrence information indicates the Butterfield/Radec Non-core Occurrence Complex should be considered part of the Vail Lake Core Occurrence Complex (see the proposed revised critical habitat rule, 73 FR 3328; January 17, 2008). The physical and biological features found in Unit 5 may require special management considerations or protection to minimize impacts from recreational activities, trash dumping, invasion by nonnative plants, fire, enhanced soil nitrogen, and climate change.

We excluded approximately 6,398 ac (2589 ha) that we proposed as revised critical habitat in this unit that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below).

*Unit 6: Tule Peak*

Unit 6 consists of approximately 326 ac (132 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago patagonica, Antirrhinum coulterianum*, *Collinsia concolor*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open, woody canopy scrublands; and hilltops (Service 2003a, pp. 44–47; Service GIS satellite imagery; Pratt 2008a, p. 1; 2008b, p. 1; 2008c, p. 1; 2008d, p. 1; 2008e, p. 1). Unit 6 is located in Riverside County, south of SR 371 and the community of Anza, in the vicinity of Tule Peak Road and the southern boundary of the Cahuilla Band of Indians' lands. This unit includes land associated with the Tule Peak/Silverado Core Occurrence Complex (see ''**Background**'' section above). The physical and biological features found in Unit 6 may require special management considerations or protection to minimize impacts from recreational activities, primarily unauthorized off-road vehicle activity (Service 2003b, p. 79), trash dumping, invasion by nonnative plants, fire, and climate change.

We excluded approximately 4,903 ac (1,984 ha) that we proposed as revised critical habitat in this unit that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2)—Other Relevant Impacts – Conservation Partnerships**'' section below). We also excluded approximately 1,203 ac (487 ha) of Cahuilla Band of Indians' land from this final revised critical habitat designation based our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Impacts to Government-To-Government Relationships With Tribes and Economics** '' section below).

*Unit 7: Bautista*

Unit 7 consists of approximately 13,880 ac (5,617 ha) of habitat that was not within the geographical area occupied by the subspecies at the time of listing (although this area falls within the historical range of the species). Currently this unit contains habitat that may be unoccupied by individuals in a given year, but lands within this unit are considered occupied at the population level. This unit contains the Bautista Road Core, Pine Meadow Non-core, Lookout Mountain Non-core and Horse Creek Non-core Occurrence Complexes (see ''**Background**'' and ''Criteria Used To Identify Critical Habitat'' sections above). As further discussed in the ''Criteria Used To Identify Critical Habitat'' section, we determined habitat connectivity to higher elevation occurrence complexes is essential for the conservation of the subspecies, and, therefore, that the area in Unit 7 is essential for the conservation of the subspecies. Additionally, this unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago patagonica, Antirrhinum coulterianum*, *Collinsia concolor*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 44–47; Service GIS database; Anderson 2008, pp. 1–5). Unit 7 is located in Riverside County north of SR 371 and the community of Anza.

We did not exclude the lands in this unit proposed as revised critical habitat that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP because we determined that the benefits of including those lands outweighed the benefits of excluding them from the designation (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below). We did exclude approximately 79 ac (32 ha) of Ramona Band of Cahuilla Indians' land in this unit that we proposed as revised critical habitat. This exclusion is based our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of this area will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Impacts to Government-To-Government Relationships With Tribes and Economics**'' section below).

*Unit 8: Otay*

Unit 8 consists of approximately 34,941 ac (14,140 ha) of habitat that was occupied by the subspecies at the time

of listing and is currently occupied. This unit contains all of the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta, Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 50, 51; Service GIS database). Unit 8 is located in San Diego County, from the Mexican border to north of SR 94 in the vicinity of Otay Mountain and Otay Lakes. This unit includes land associated with the Otay Mountain Core Occurrence Complex (see **''Background''** and ''**Summary of Changes From Previously Designated and Proposed Revised Critical Habitat**'' sections above). The physical and biological features found in Unit 8 may require special management considerations or protection to minimize impacts from loss and fragmentation of habitat and landscape connectivity due to development, maintenance and recreational activities, trash dumping, invasion by nonnative plants, fire, enhanced soil nitrogen, and climate change.

We excluded approximately 1,673 ac (677 ha) that we proposed as revised critical habitat in this unit covered by the Chula Vista Subarea Plan based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Other Relevant Impacts – Conservation Partnerships**'' section below). We also excluded approximately 109 ac (44 ha) of Air Force land we proposed as revised critical habitat in this unit based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the subspecies (see ''Application of Section 4(b)(2) – Impacts to National Security'' section below).

*Unit 9: La Posta–Campo*

Unit 9 consists of approximately 2,647 ac (1,071 ha) of habitat that was not within the geographical area occupied by the subspecies at the time of listing. However, this unit is currently occupied and contains the La Posta/Campo Core Occurrence Complex (see ''Status and Distribution of Populations in San Diego County'' section of the proposed rule published January 17, 2008 (73 FR 3328), and ''Criteria Used To Identify Critical Habitat'' section above). We determined that the area supporting the La Posta/Campo Core Occurrence Complex is essential for the conservation of the subspecies because it is likely to contain a resilient core population including one or more subpopulations that are a source of immigrants to other habitat (see ''**Background**'' and ''Criteria Used To Identify Critical Habitat'' sections above). Additionally, this unit contains all the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Antirrhinum coulterianum*, *Collinsia concolor*, *Cordylanthus rigidus*, and *Castilleja exserta* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Bureau of Indian Affairs 1992, p. C–5; Allen and Kurnow 2005, pp. 10, 13–16; Dicus 2005a, p.1; PSBS 2005a, p. 18; 2005b, p. 26; O'Conner 2006, pp. 1–4, Science Applications International Corporation 2006 pp. 33, 34, 37; Alfaro and Alfaro 2007, pp. 6–8; Service GIS database).

We excluded approximately 3,167 ac (1,282 ha) of Campo Band of Kumeyaay Indians' land that we proposed as revised critical habitat in this unit based on our determination the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2)—Impacts to Government-To-Government Relationships With Tribes and Economics**'' section below). We also excluded approximately 2,572 ac (1,040 ha) of Navy-owned or controlled land associated with the La Posta Facility that we proposed as revised critical habitat in this unit based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the subspecies (see ''**Application of Section 4(b)(2) – Impacts to National Security**'' section below).

*Unit 10: Jacumba*

Unit 10 consists of approximately 2,514 ac (1,017 ha) of habitat that was occupied by the subspecies at the time of listing and is currently occupied. This unit contains all the features essential to the conservation of the subspecies (PCEs 1, 2, and 3), including the following: *Plantago erecta* and *P. patagonica* host plants; nectar sources; open woody-canopy scrublands; and hilltops (Service 2003a, pp. 52, 54; Service GIS database). Unit 10 is located in San Diego County south of Interstate 8 and north of the community of Jacumba. This unit includes land associated with the Jacumba Core Occurrence Complex (see ''**Background**'' and ''Criteria Used To Identify Critical Habitat'' sections above). The physical and biological features found in Unit 10 may require special management considerations or protection to minimize impacts from loss and fragmentation of habitat and landscape connectivity due to development, recreational activities, trash dumping, invasion by nonnative plants, fire, and climate change.

**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 jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species.

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 Quino checkerspot butterfly or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (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 Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. 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 affected species. Generally, the conservation role of Quino checkerspot butterfly critical habitat units is to support viable core populations of the subspecies.

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 Quino checkerspot butterfly include, but are not limited to, actions that remove host plants and nectar sources, introduce or increase invasion rates of invasive, nonnative exotic plant species, or fragment habitat. Such activities could include, but are not limited to:

• Off-road vehicle use;

• Mechanical soil disturbance;

• Clearing or grading;

• Development; and

• Pesticide use.

These activities could result in reduction or degradation of habitat necessary for the growth and reproduction of these butterflies and their host plants, including reduction or preclusion of necessary movement of adults between host plant patches within a greater habitat patch, and directly or cumulatively causing adverse affects to Quino checkerspot butterflies and their life cycles.

**Exclusions Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In the following sections, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

*Economic Analysis*

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The DEA (dated December 19, 2008) was made available for public review and comment from December 19, 2008, to January 20, 2009 (73 FR 77568). Substantive comments and information received on the DEA are summarized above in the ''Public Comment'' section and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed a final economic analysis (FEA) (dated March 24, 2009) of the designation that updates the DEA.

The primary purpose of the economic analysis is to estimate the potential incremental economic impacts associated with the revised designation of critical habitat for the Quino checkerspot butterfly. The information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). It 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 economic analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. 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. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed the Quino checkerspot butterfly as

endangered (62 FR 2313; August 16, 1997), and considers those costs that may occur in the years following the revised designation of critical habitat, with the timeframes for this analysis varying by activity.

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 23-year timeframe, from when the proposed rule became available to the public (73 FR 3328; January 17, 2008). The 23-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 are based become increasingly speculative.

The vast majority of potential incremental economic impacts attributed to the revised critical habitat designation, if it was finalized as proposed, would be expected to be related to residential development (62 to 86 percent) and tribal activities (38 to 14 percent). The FEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 23 years to be $13.1 million to $50.4 million ($1.1 million to 4.2 million annualized) in present value terms using a 7 percent discount rate (including areas considered for exclusion under section 4(b)(2) of the Act).

The FEA estimates the largest impacts of the proposed revised critical habitat rule would result from section 7 consultations with the Service on residential development projects likely to occur in areas where surveys are unable to detect the butterfly (including tribal lands). The best estimates give a range of costs based on low and high impact assumptions of development projections (projection uncertainty). In the high estimate scenario, if the critical habitat designation was finalized as proposed, five projects in Unit 9 and nine projects in Unit 10 would likely require consultation with the Service as a result of the critical habitat designation. Conservatively assuming that each project is undertaken by a separate entity, as many as 14 developers would likely be affected over the 23-year timeframe of the analysis. At the high end, the one-time costs resulting from the consultation process, including administrative time spent by the businesses, compensation costs, and the value of time delays, total approximately $16.1 million for the projects in Unit 9 and $26.8 million for the projects in Unit 10. Additionally, over the 23–year timeframe, a high-end estimate of 131 projects (approximately six projects per year) would experience additional administrative costs as a result of the consultation. These costs result from the need to address adverse modification in a consultation that would occur even in the absence of critical habitat. These additional administrative costs are estimated to be $1,000 per project.

The final economic analysis is available at *http://www.regulations.gov* or upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

*Benefits of Designating Critical Habitat*

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing 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 for 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 features essential to the conservation of the subspecies and habitat that is identified, if managed or protected, could provide for the survival and recovery of the subspecies.

The identification of areas that contain the features essential to the conservation of the subspecies, or are otherwise essential for the conservation of the subspecies if outside the geographical area occupied by the subspecies at the time of listing, is a benefit resulting from the designation. The critical habitat designation process includes peer review and public comment on the identified physical and biological features and areas, and provides a mechanism 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 subspecies, and is valuable to land owners and managers in developing conservation management plans for identified areas, as well as for any other identified occupied habitat or suitable habitat that may not be included in the areas the Service identifies as meeting the definition of critical habitat.

In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, habitat conservation plans (HCPs) have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

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 the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may

provide greater benefits to the recovery of a species than would listing alone.

For Quino checkerspot butterfly, when consulting under section 7(a)(2) of the Act in designated critical habitat, independent analyses are made for jeopardy and adverse modification. In consultations on projects where surveys detect high densities of butterflies or low densities of butterflies combined with high densities of butterfly resources (host plants, nectaring plants), there is not likely to be a quantifiable difference between the jeopardy analysis and the adverse modification analysis as we estimate take for this subspecies in terms of acres of occupied habitat, and the Act requires Federal agencies to minimize the impact of the taking on the subspecies that may result from implementation of a proposed action. Furthermore, any upfront modifications made to the project description to minimize the project's impact on the critical habitat designation will also minimize the impacts of the taking of individuals on the subspecies. The habitat-based population distributions predict the habitat distribution needed to conserve each core occurrence complex in the long-term (see ''Criteria Used To Identify Critical Habitat'' section above). All lands within the critical habitat units are occupied at the population level; however, they contain habitat that may be unoccupied by individuals in a given year. Observable butterfly activity will vary in any given year at any one location due to multiple variables affecting the butterfly presence (for example, metapopulation dynamics, drought, weather conditions, and available plant resources). For example, annual nectar and host plant densities will vary by location within and between years based on local microclimate conditions, and adult butterfly presence will vary with resource availability. Furthermore, because Quino checkerspot butterflies are capable of multiyear diapause, fewer adult butterflies may emerge in years when nectar and host plant resources are limited. Therefore, even within habitat-based population distributions (occupied critical habitat as defined in this rule), surveys may not detect butterflies at a given location within a unit during a given flight season, and subspecies' protection under the Act may be limited to conservation measures resulting from critical habitat adverse modification analysis.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is only required 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, by 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 for the conservation of the species are not appreciably reduced. 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 the species or 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 jeopardize the continued existence of listed species or result in destruction or adverse modification of designated critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may recommend additional conservation measures to minimize adverse effects to the primary constituent elements, but such measures would be discretionary on the part of the Federal agency. A biological opinion that concludes in a determination of no destruction or adverse modification would not suggest the implementation of any reasonable and prudent alternative, as we suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

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, 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; therefore, implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of the Act or other habitat management plans. In particular, the conservation achieved through large or regional plans is typically greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) 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 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.

*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, p.2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) 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, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and

promoting voluntary cooperation of landowners are essential to understanding the status of species on non-Federal lands, and are necessary 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, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). 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, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). 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, pp. 3–4). 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 HCPs or Other Approved Management Plans*

The benefits of excluding lands with HCPs or other approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Most HCPs and other conservation plans take many years to develop, and upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine our efforts and partnerships as well. 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 that 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 are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands covered by approved HCPs and management plans that cover listed species 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 species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

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 affect 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(a)(2).

The information provided in the previous sections applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

**Application of Section 4(b)(2) – Impacts To Government-To-Government Relationship With Tribes And Economics**

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat based on economic or other relevant impacts if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, these exclusions cannot occur if it will result in the extinction of the species concerned.

In making the following exclusions, we acknowledge that the costs and other impacts predicted in the economic analysis might not be completely avoided by this exclusion because some of the costs may still be incurred through implementation of other protections for the subspecies that exist elsewhere in the Act.

*Tribal Lands – Cahuilla Band of Indians*

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (Secretarial Order 3206; June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe in most cases designation of tribal lands as critical habitat provides very little additional benefits to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance; therefore, critical habitat designation compromises the government-to-government relationship essential to achieving our mutual goal of managing for viability of ecosystems on which threatened and endangered species depend. Section 3(B)(4) of the Appendix to Secretarial Order 3206 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), also specifically states ''* * * Critical habitat shall not be designated in [areas that may affect tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights] unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' We received multiple comment letters from several tribal governments and the BIA stating that designation of critical habitat on lands of the Cahuilla Band of Indians constitutes a significant burden to the tribe. It is our understanding that all proposed revised critical habitat on the Cahuilla Band of Indians' land is on individual allotments, and any economic impacts resulting from the designation would directly effect individual tribal members or families.

We determined that lands of the Cahuilla Band of Indians contain the physical or biological features essential to the conservation of the Quino checkerspot butterfly and therefore meet the definition of critical habitat under the Act. In making our final decision with regard to these tribal lands, we considered several factors including our relationship with the affected tribe, our recognition that tribal governments protect and manage their resources in the manner most beneficial to them, and the estimated economic impacts to the affected tribe associated with the designation of critical habitat. We recognize that the Cahuilla Band of Indians exercises legislative, administrative, and judicial control over activities within the boundaries of its lands and has a natural resource management program and staff. The tribe's natural resource management efforts will continue to be implemented regardless of whether tribal lands are designated as critical habitat. Under section 4(b)(2) of the Act, we are excluding all Cahuilla Band of Indians' lands (in Unit 6) that contain features essential to the conservation of the Quino checkerspot butterfly from this final revised critical habitat designation. As described in our analysis below, we reached this determination because of our effective working relationship with the tribe, our responsibilities under Secretarial Order 3206, and in consideration of the disproportionate relative economic impact on the tribe associated with the designation of critical habitat on tribal lands.

Socioeconomic data discussed in chapter 6 of the FEA describe the vulnerability of the Cahuilla Band of Indians to economic impacts. The tribe governs its lands and is solely responsible for providing necessary public services that are typically provided by county and city governments on nontribal lands. However, the tribe has a much smaller population base and a limited amount of land available for development or conservation. Therefore, far fewer resources are available to the Cahuilla Band of Indians to draw upon in comparison to local and county governments, in addition to the tribe serving a disadvantaged population.

According to data collected in preparation of the DEA, the Cahuilla Band of Indians has a relatively small population (168 members) from which to raise revenue. This resource base is significantly smaller than the surrounding county (Riverside) that supports a population base of 1,545,387 people. The DEA stated the median household income level of the Cahuilla Band of Indians is lower than the surrounding county. Likewise, the proportion of people below the poverty level is substantially higher for the Cahuilla Band of Indians relative to the nontribal populations of Riverside County. There is an even larger disparity among the most impoverished people (percentage of people below 50 percent of the poverty level); the percentage of people on the Cahuilla Band of Indians' reservation whose income is below half the poverty level (approximately 15 percent) is approximately three times that of the nontribal population of Riverside County (approximately 6 percent). This disparity is also reflected in the property values on the reservation, where the median value of owner-occupied houses is less than half that of owner-occupied houses in the county.

Chapter 6 of the FEA states that, while no specific economic impacts can be quantified, it should be emphasized that the Cahuilla Band of Indians do not have independent taxing authority and therefore must rely on development fees within limited tribal lands to generate government revenue. While there are no development plans for the Cahuilla Band of Indians that can be specified at this time, potential restrictions on development resulting from critical habitat designation could result in additional constraints to limited tribal resources. In consideration of economic vulnerability of the Cahuilla Band of Indians discussed above, their limited resource base, and the disadvantaged population they serve, we determined any economic impacts associated with a critical habitat designation will have a disproportionately negative impact on this tribe and our working relationship with them.

Benefits of Inclusion – Cahuilla Band of Indians

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard under which consultation is completed.

The Cahuilla Band of Indians' lands are within the habitat-based population distribution of the Tule Peak/Silverado Core Occurrence Complex (Unit 6). If surveys detect occupancy within a project footprint, then consultation would occur regardless of critical habitat designation, and the likelihood of this occurring within this occupied critical habitat unit is high. However, as discussed above in the ''Benefits of Designating Critical Habitat'' section, even in occupied habitat, surveys may not detect butterflies during any given flight season. Therefore, the conservation benefits of critical habitat designation for the Quino checkerspot butterfly are reduced but not negated by population occupancy in Unit 6.

Another possible benefit of including lands in a critical habitat designation is that a designation can serve to educate the landowner and the public regarding the potential conservation value of an

area, which could help focus conservation efforts to designated areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed above in the ''Tribal Comments'' section, the Cahuilla Band of Indians is aware of the value of its lands to the conservation of the Quino checkerspot butterfly and currently implements management measures that contribute to the conservation of natural resources and native species. The tribe is already working with the Service to understand the habitat needs of this subspecies, and has an active natural resource management program. Further, the tribal lands were included in the proposed designation, and the proposed designation reached a wide audience. Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the BIA or tribes on areas important to the long-term conservation of this subspecies) may have already been realized.

In light of continued commitment by the Cahuilla Band of Indians to manage its lands in a manner that promotes the conservation of native species, we believe designation of critical habitat on these tribal lands would provide few additional regulatory and conservation benefits to the subspecies beyond those that will result from continued jeopardy consultation.

Benefits of Exclusion – Cahuilla Band of Indians

The benefits of excluding approximately 1,203 ac (487 ha) of Cahuilla Band of Indians' land from designated critical habitat are significant. We believe the benefits that would be realized by forgoing the designation of critical habitat on these lands include: (1) Furtherance of our Federal Indian Trust obligations and our deference to tribal conservation and natural resource management of its lands and resources, including Federal trust species; (2) continuance and strengthening of our effective working relationships with the tribe to promote conservation of the Quino checkerspot butterfly and its habitat; (3) conservation benefits by tribal programs that might not otherwise occur; and (4) removal of all incremental economic impacts to the tribe that may result from critical habitat designation on tribal lands.

We communicated with the Cahuilla Band of Indians throughout the designation process. Meetings and communications were conducted in accordance with Secretarial Order 3206; the Presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Department Manual of the Department of the Interior (512 DM 2). We believe tribes should be the governmental entities to manage and promote conservation of the Quino checkerspot butterfly on their lands. We recognize the tribes' fundamental right to provide for tribal resource management activities, including those relating to the Quino checkerspot butterfly. The Cahuilla Band of Indians informed us that critical habitat would be viewed as an intrusion on its sovereign abilities to manage natural resources in accordance with its own policies, customs, and laws. Furthermore, several comment letters received from tribes and the BIA indicated designation of critical habitat would adversely affect our working relationships with tribes.

Several tribes and the BIA commented that designation of critical habitat on these tribal lands would constitute a significant burden to the Cahuilla Band of Indians. Potential economic impacts only become realized through consultation when there is a Federal nexus. However, in the case of tribal lands, there is a high likelihood all projected costs would be realized, as the BIA (a Federal Agency) provides technical assistance to tribes on management planning and oversees a variety of programs on tribal lands. As described above, the Cahuilla Band of Indians is economically depressed and therefore vulnerable to an economic impact. Eliminating potential incremental economic impacts of critical habitat designation would prevent additional economic impact on the tribal economy where section 7 consultation costs are already likely due to known occupancy.

Benefits of Exclusion Outweigh Benefits of Inclusion—Cahuilla Band of Indians

The benefits of excluding the Cahuilla Band of Indians' lands from critical habitat are more significant than the benefits of inclusion. The philosophy of allowing the tribe to manage its natural resources to benefit the Quino checkerspot butterfly and its habitat without the perception of additional Federal Government intrusion is consistent with our published policies on Native American natural resource management. The exclusion of these areas will also encourage and help maintain our cooperative working relationships with this tribe and facilitate further conservation activities by local tribal environmental organizations, which will likely provide benefits to this subspecies that would not otherwise occur. Finally, as discussed above, eliminating the disproportionately high incremental economic impacts associated with a critical habitat designation on the Cahuilla Band of Indians' lands will prevent unnecessary and counter-productive impacts to the vulnerable tribal economy. Therefore, we determined the benefits identified above of excluding approximately 1,203 ac (487 ha) of Cahuilla Band of Indians' land from the critical habitat designation outweigh the benefits of including these tribal lands.

Exclusion Will Not Result in Extinction of the Species—Cahuilla Band of Indians

We determined that exclusion of the Cahuilla Band of Indians' lands from the final revised designation of critical habitat for the Quino checkerspot butterfly will not result in the extinction of the subspecies. The majority of lands within proposed Unit 6 that are outside of the tribe's jurisdiction are protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values, thereby providing conservation value to the physical or biological features essential to the conservation of the Quino checkerspot butterfly that are found within the area supporting the Tule Peak/Silverado Core Occurrence Complex. Additionally, the tribe's continued commitment to manage its lands in a manner that promotes the conservation of native species, and the high likelihood of future Federal nexuses on tribal land resulting in consultations under the jeopardy standard of section 7(a)(2) of the Act that will ensure activities on tribal land are not likely to jeopardize the continued existence of the subspecies provide assurances that the subspecies will not go extinct as a result of this exclusion. Therefore, based on the above discussion we are excluding approximately 1,202 ac (488 ha) of Cahuilla Band of Indians' land proposed in Unit 6 from this critical habitat designation.

*Tribal Lands – Ramona Band of Cahuilla Indians*

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (Secretarial Order 3206; June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe in most cases designation of tribal lands as critical habitat provides very little additional benefits to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance; therefore, critical habitat designation compromises the government-to-government relationship essential to achieving our mutual goal of managing for viability of ecosystems on which threatened and endangered species depend. Section 3(B)(4) of the Appendix to Secretarial Order 3206 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), also specifically states ''* * * Critical habitat shall not be designated in [areas that may affect tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights] unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' We received multiple comment letters from several tribal governments and the BIA stating that designation of critical habitat on tribal lands constitutes a significant burden to tribes. The Ramona Band of Cahuilla Indians is the only tribe affected by the proposed revision to critical habitat that does not own a casino. It is our understanding the Ramona Band of Cahuilla Indians' primary economic development plan is the low-impact ecotourism ''resort'' (solar-powered electricity and only structures are small cabin-like ''yurts'' and a electrical facility) currently under construction on their reservation.

We determined that tribal fee lands of the Ramona Band of Cahuilla Indians contain the physical or biological features essential to the conservation of the Quino checkerspot butterfly and meet the definition of critical habitat under the Act. In making our final decision with regard to these tribal lands, we considered several factors including our relationship with the affected tribe, our recognition that tribal governments protect and manage their resources in the manner most beneficial to them, and the estimated economic impacts to the affected tribe associated with the designation of critical habitat. We recognize that the Ramona Band of Cahuilla Indians exercises legislative, administrative, and judicial control over activities within the boundaries of its lands and that the tribe has a natural resource management program and staff. The tribe's natural resource management efforts will continue to be implemented regardless of whether tribal lands are designated as critical habitat. Under section 4(b)(2) of the Act, we are excluding all Ramona Band of Cahuilla Indians' lands (in Unit 7) from this final revised critical habitat designation. As described in our analysis below, we reached this determination because of our effective working relationship with the tribe and in consideration of the disproportionate economic impact associated with the designation of critical habitat on tribal lands.

Socioeconomic data discussed in chapter 6 of the FEA demonstrate the economic vulnerability of the Ramona Band of Cahuilla Indians. The tribe self-governs its lands and is solely responsible for public services in the same manner as county and city governments. The Ramona Band of Cahuilla Indians does not have independent taxing authority and, therefore, must rely on development fees within limited tribal lands to generate government revenue. However, as discussed in detail in chapter 6 of the FEA, local tribal governments have far fewer resources to draw from than county governments and the Ramona Band of Cahuilla Indians serves an especially disadvantaged population. Furthermore, the tribe has a limited amount of reservation lands available for development and conservation.

The Ramona Band of Cahuilla Indians has an extremely small population (8 members), including children, from which to raise revenue. The FEA did not analyze impacts to the Ramona Band of Cahuilla Indians because data were not available, but it is our understanding that their resource base is reduced compared to the Cahuilla Band of Indians. This resource base is significantly smaller than the surrounding county (Riverside) that supports a population base of 1,545,387 people. Additionally, although the DEA did not provide specific statistics for the Ramona Band of Cahuilla Indians, it is reasonable to assume, based on our general knowledge of the tribe's circumstances (see above discussion) that, similar to the Cahuilla Band of Indians, the proportion of tribal members below the poverty level, particularly the most impoverished people, is substantially higher relative to the nontribal populations of Riverside County, and the median value of owner-occupied houses is less than half that of owner-occupied houses in the county.

The DEA did not analyze costs to the Ramona Band of Cahuilla Indians as we were initially unaware that the proposed revisions to critical habitat included tribally owned fee lands for this tribe. Land ownership data used in our analysis of proposed revisions to critical habitat did not accurately reflect recent tribal purchases. However, in consideration of land ownership information submitted to the Service after publication of proposed revisions to critical habitat (indicating 79 ac (32 ha) of lands owned by the tribe were included in Unit 7), the general economic vulnerability of tribes discussed in the DEA, the Ramona Band of Cahuilla Indians' limited resource base, and the disadvantaged population they serve, we determined any economic impacts associated with a critical habitat designation will have a disproportionately negative impact on this tribe.

Benefits of Inclusion – Ramona Band of Cahuilla Indians

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard under which consultation is completed.

Ramona Band of Cahuilla Indians' lands are within the habitat-based population distribution of the Bautista Road core occurrence complexes (Unit 7). If surveys detect occupancy within a project footprint, then consultation would occur regardless of critical habitat designation, and the likelihood of this occurring within this occupied critical habitat unit is high. However, as discussed above in the ''Benefits of Designating Critical Habitat'' section, surveys may not detect butterflies during any given flight season even in occupied habitat. Therefore, the conservation benefits of critical habitat designation for the Quino checkerspot butterfly are reduced but not negated by population occupancy in Unit 7.

Another possible benefit of including lands in a critical habitat designation is

that the designation can serve to educate the landowner and the public regarding the potential conservation value of an area, and this may help focus conservation efforts to designated areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed above in the ''Tribal Comments'' section, the Ramona Band of Cahuilla Indians is aware of the value of its lands to the conservation of the Quino checkerspot butterfly and currently implements management measures that contribute to the conservation of natural resources and native species, for example, surveys and mapping of sensitive native species and habitat restoration associated with ecotourism resort development. The Ramona Band of Cahuilla Indians is already working with the Service to understand the habitat needs of this subspecies, and has an active natural resource management program including nontribal staff members. Further, the tribal lands were included in the proposed designation, which itself reached a wide audience and served to educate the public. Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the BIA or tribes on areas important to the long-term conservation of this subspecies) may have already been realized.

In light of continued commitment by the Ramona Band of Cahuilla Indians to manage its lands in a manner that promotes the conservation of native species, we believe designation of critical habitat on tribal fee lands would provide few additional regulatory and conservation benefits to the subspecies beyond those that will result from continued jeopardy consultation.

Benefits of Exclusion – Ramona Band of Cahuilla Indians

The benefits of excluding approximately 79 ac (32 ha) of Ramona Band of Cahuilla Indians' land from designated critical habitat are significant. We believe the benefits that would be realized by forgoing the designation of critical habitat on these lands include: (1) Furtherance of our Federal Indian Trust obligations and our deference to tribal conservation and natural resource management of their lands and resources, including Federal trust species; (2) continuance and strengthening of our effective working relationships with the tribe to promote conservation of the Quino checkerspot butterfly and its habitat; (3) conservation benefits by tribal programs that might not otherwise occur; and (4) removal of all incremental economic impacts to the tribe that may result from critical habitat designation on tribal lands.

We communicated with the Ramona Band of Cahuilla Indians during the designation process, as soon as we were aware that the proposed revision included tribal fee lands. Meetings and communications were conducted in accordance with Secretarial Order 3206; the Presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Department Manual of the Department of the Interior (512 DM 2). We believe tribes should be the governmental entities to manage and promote conservation of the Quino checkerspot butterfly on their lands. We recognize tribes' fundamental right to provide for tribal resource management activities, including those relating to the Quino checkerspot butterfly. The Ramona Band of Cahuilla Indians informed us that critical habitat would be viewed as an intrusion on its sovereign abilities to manage natural resources in accordance with its own policies, customs, and laws. Furthermore, several comment letters received from tribes and the BIA indicated designation of critical habitat would adversely affect our working relationships with the Ramona Band of Cahuilla Indians.

Several tribes, including the Ramona Band of Cahuilla Indians, and the BIA commented that designation of critical habitat on tribal lands would constitute a significant burden to affected tribes. Potential economic impacts only become realized through consultation when there is a Federal nexus. However, in the case of tribal lands, there is a high likelihood all projected costs will be realized, as the BIA (a Federal Agency) provides technical assistance to tribes on management planning and oversees a variety of programs on tribal lands. As described above, the Ramona Band of Cahuilla Indians is economically depressed and therefore vulnerable to an economic impact. Eliminating potential incremental economic impacts of critical habitat designation will prevent additional economic impact on the tribal economy where section 7 consultation costs are already likely due to known occupancy.

Benefits of Exclusion Outweigh Benefits of Inclusion – Ramona Band of Cahuilla Indians

The benefits of excluding the Ramona Band of Cahuilla Indians' lands from critical habitat are more significant than the benefits of inclusion. The philosophy of allowing the tribe to manage its natural resources to benefit the Quino checkerspot butterfly and its habitat without the perception of additional Federal Government intrusion is consistent with our published policies on Native American natural resource management. The exclusion of these areas will also encourage and help maintain our cooperative working relationships with this tribe and facilitate further conservation activities by the tribal environmental organization, which will likely provide benefits to this subspecies that would not otherwise occur. Finally, as discussed above, eliminating the disproportionately high incremental economic impacts associated with a critical habitat designation on the Ramona Band of Cahuilla Indians' lands will prevent unnecessary and counter-productive impacts to the vulnerable tribal economy. Therefore, we determined the benefits identified above of excluding approximately 79 ac (32 ha) of Ramona Band of Cahuilla Indians' land from the revised critical habitat designation outweigh the benefits of including these tribal lands.

Exclusion Will Not Result in Extinction of the Species—Ramona Band of Cahuilla Indians

We determined that the exclusion of 79 ac (32 ha) of the Ramona Band of Cahuilla Indians' land from the final revised designation of critical habitat for the Quino checkerspot butterfly will not result in the extinction of the subspecies. The vast majority of lands proposed in Unit 7 are being designated as critical habitat and will receive the full protection afforded to critical habitat under the Act. Additionally, the tribe's continued commitment to manage its lands in a manner that promotes the conservation of native species, and the likelihood of future Federal nexuses on tribal land resulting in consultations under the jeopardy standard of section 7(a)(2) of the Act that will ensure activities on tribal land are not likely to jeopardize the continued existence of the subspecies provide assurances that the subspecies will not go extinct as a result of this exclusion. Therefore, based on the above discussion we are excluding approximately 79 ac (32 ha) of Ramona

Band of Cahuilla Indians' land proposed in Unit 7 from this critical habitat designation.

*Tribal Lands—Campo Band of Kumeyaay Indians*

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (Secretarial Order 3206; June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe in most cases designation of tribal lands as critical habitat provides very little additional benefits to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance; therefore critical habitat designation compromises the government-to-government relationship essential to achieving our mutual goal of managing for viability of ecosystems on which threatened and endangered species depend. Section 3(B)(4) of the Appendix to Secretarial Order 3206 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), also specifically states ''* * * Critical habitat shall not be designated in [areas that may affect tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights] unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' We received multiple comment letters from several tribal governments and the BIA stating that designation of critical habitat on tribal lands constitutes a significant burden to tribes.

We determined that 3,167 ac (1,282 ha) of Campo Band of Kumeyaay Indians' lands (in Unit 9) contain the physical or biological features essential to the conservation of the Quino checkerspot butterfly and meet the definition of critical habitat under the Act. In making our final decision with regard to these tribal lands, we considered several factors including our relationship with the affected tribe, our recognition that tribal governments protect and manage their resources in the manner most beneficial to them, and the estimated economic impacts to the affected tribe associated with the designation of critical habitat. We recognize that the Campo Band of Kumeyaay Indians exercises legislative, administrative, and judicial control over activities within the boundaries of its lands and has a natural resource management program and staff. Natural resource management efforts will continue to be implemented by the Campo Band of Kumeyaay Indians regardless of whether tribal lands are designated as critical habitat. Under section 4(b)(2) of the Act, we are excluding all 3,167 ac (1,282 ha) of Campo Band of Kumeyaay Indians' lands (in Unit 9) from this final revised critical habitat designation that contain the physical and biological features essential to the conservation of the Quino checkerspot butterfly. As described in our analysis below, we reached this determination because of our effective working relationship with the tribe and in consideration of the disproportionate economic impact associated with the designation of critical habitat on tribal lands.

Socioeconomic data discussed in chapter 6 of the FEA demonstrate the economic vulnerability of the Campo Band of Kumeyaay Indians. The tribe self-governs its lands and is solely responsible for public services in the same manner as county and city governments. However, as discussed in detail in chapter 6 of the FEA, this tribal government has far fewer resources to draw from than county governments and serves an especially disadvantaged population. Tribal governments do not have independent taxing authority and therefore must rely on development fees within limited tribal lands to generate government revenue. Furthermore, the Campo Band of Kumeyaay Indians has a very limited amount of reservation lands available for development and conservation.

According to data collected in preparation of the DEA, the Campo Band of Kumeyaay Indians has a small population (372 members) from which to raise revenue. This resource base is significantly smaller than the surrounding county (San Diego) that supports a population base of 2,813,833 people. The Campo Band of Kumeyaay Indians' unemployment rate is almost twice that of San Diego County, and the median household income level is lower. Likewise, the proportion of people below the poverty level is substantially higher for the Campo Band of Kumeyaay Indians relative to the nontribal population of San Diego County. There is an even larger disparity among the most impoverished people (percentage of people below 50 percent of the poverty level); the percentage of people below half of the poverty level on the Campo Band of Kumeyaay Indians' reservation (approximately 29 percent) is more than five times that of the nontribal population of San Diego County (approximately 5 percent). This disparity is also reflected in property values on the reservation, where the median value of owner-occupied houses is less than half that of owner-occupied houses in San Diego County.

As described in Chapter 6 of the FEA, the projected incremental economic impacts that would be incurred by the Campo Band of Kumeyaay Indians as a result of the proposed critical habitat designation totals $4.9 million to $6.8 million over the 23 year analysis period ($406,000 to $563,000 annualized) at a seven percent discount rate (up to 62 percent of all incremental economic impacts of designating critical habitat in Unit 9). Tribal lands available for development are limited on the reservation, and up to 62 percent of all projected incremental economic impacts of designating critical habitat in Unit 9 (primarily residential development) were anticipated to be incurred by the Campo Band of Kumeyaay Indians. Therefore, in consideration of economic vulnerability of the tribal government discussed above, its limited resource base, and the disadvantaged population it serves, we determined any economic impacts associated with a critical habitat designation will have a disproportionately negative impact on this tribe.

Benefits of Inclusion—Campo Band of Kumeyaay Indians

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard under which consultation is completed.

The Campo Band of Kumeyaay Indians' land are within the habitat-based population distribution of the La Posta–Campo Core Occurrence Complex (Unit 9). If surveys detect occupancy within a project footprint, then consultation would occur regardless of critical habitat designation, and the

likelihood of this occurring within this occupied critical habitat unit is high. However, as discussed above in the ''Benefits of Designating Critical Habitat'' section, even in occupied habitat, surveys may not detect butterflies during any given flight season. Therefore, the conservation benefits of critical habitat designation are reduced but not negated by population occupancy in Unit 9.

Another possible benefit of including lands in a critical habitat designation is that the designation can serve to educate the landowner and the public regarding the potential conservation value of an area, and this may help focus conservation efforts to designated areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed in the ''Tribal Comments'' section above, the Campo Band of Kumeyaay Indians is aware of the value of its lands to the conservation of the Quino checkerspot butterfly and currently implements management measures that contribute to the conservation of natural resources and native species. For example, in their first comment letter (March 20, 2008) the tribe cited a completed riparian habitat restoration project. The Campo Band of Kumeyaay Indians is already working with the Service to understand the habitat needs of this subspecies, and has an active natural resource management program. Further, the tribal lands were included in the proposed designation, which itself reached a wide audience and served to educate the public. Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the BIA or tribes on areas important to the long-term conservation of this subspecies) may have already been realized.

In light of continued commitment by the Campo Band of Kumeyaay Indians to manage its lands in a manner that promotes the conservation of native species, we believe designation of critical habitat on tribal lands would provide few additional regulatory and conservation benefits to the subspecies beyond those that will result from continued jeopardy consultation.

Benefits of Exclusion—Campo Band of Kumeyaay Indians

The benefits of excluding approximately 3,167 ac (1,282 ha) of Campo Band of Kumeyaay Indians land from designated critical habitat are significant. We believe the benefits that would be realized by forgoing the designation of critical habitat on these lands include: (1) Furtherance of our Federal Indian Trust obligations and our deference to tribal conservation and natural resource management of their lands and resources, including Federal trust species; (2) continuance and strengthening of our effective working relationship with the tribe to promote conservation of the Quino checkerspot butterfly and its habitat; (3) conservation benefits by tribal programs that might not otherwise occur; and (4) removal of all incremental economic impacts to the tribe that may result from critical habitat designation on tribal lands.

We communicated with the Campo Band of Kumeyaay Indians throughout the designation process. Meetings and communications were conducted in accordance with Secretarial Order 3206; the Presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Department Manual of the Department of the Interior (512 DM 2). We believe tribes should be the governmental entities to manage and promote conservation of the Quino checkerspot butterfly on their lands. We recognize tribes' fundamental right to provide for tribal resource management activities, including those relating to the Quino checkerspot butterfly. The Campo Band of Kumeyaay Indians informed us that critical habitat would be viewed as an intrusion on its sovereign abilities to manage natural resources in accordance with its own policies, customs, and laws. Furthermore, several comment letters received from the Campo Band of Kumeyaay Indians, other tribes, and the BIA indicated designation of critical habitat adversely affects our working relationships with all tribes.

The Campo Band of Kumeyaay Indians and the BIA commented that designation of critical habitat on Campo Band of Kumeyaay Indians' lands would constitute a significant burden to the tribe. Projected economic impacts only become realized through consultation when there is a Federal nexus. However, in the case of tribal lands, there is a high likelihood all projected costs will be realized, as the BIA (a Federal Agency) provides technical assistance to tribes on management planning and oversees a variety of programs on tribal lands. As described above, the Campo Band of Kumeyaay Indians is economically depressed and therefore vulnerable to the economic impact. Eliminating projected incremental economic impacts of critical habitat designation as described in the FEA will prevent additional economic impact on the tribal economy where section 7 consultation costs are already likely due to known occupancy.

Benefits of Exclusion Outweigh Benefits of Inclusion—Campo Band of Kumeyaay Indians

The benefits of excluding the Campo Band of Kumeyaay Indians' lands from critical habitat are more significant than the benefits of inclusion. The philosophy of allowing the tribe to manage its natural resources to benefit the Quino checkerspot butterfly and its habitat without the perception of additional Federal Government intrusion is consistent with our published policies on Native American natural resource management. The exclusion of these areas will also encourage and help maintain our cooperative working relationship with the Campo Band of Kumeyaay Indians and facilitate further conservation activities by local tribal environmental organizations, which will likely provide benefits to this subspecies that would not otherwise occur. Finally, as discussed above, eliminating the disproportionately high incremental economic impacts associated with a critical habitat designation on the Campo Band of Kumeyaay Indians' land will prevent unnecessary and counter-productive impacts to the vulnerable tribal economy. Therefore, we determined the benefits identified above of excluding approximately 3,087 ac (1,249 ha) of Campo Band of Kumeyaay Indians' land from the critical habitat designation outweigh the benefits of including these tribal lands.

*Exclusion Will Not Result in Extinction of the Species – Campo Band of Kumeyaay Indians*

We determined that the exclusion of the Campo Band of Kumeyaay Indians' lands from the final revised designation of critical habitat for the Quino checkerspot butterfly will not result in the extinction of the subspecies. The tribe's continued commitment to manage its lands in a manner that promotes the conservation of native species, and the high likelihood of future Federal nexuses on tribal land resulting in consultations under the jeopardy standard of section 7(a)(2) of the Act that will ensure activities on tribal land are not likely to jeopardize the continued existence of the subspecies provide assurances that the subspecies will not go extinct as a result of this exclusion. Therefore, based on the above discussion we are excluding approximately 3,167 ac (1,282 ha) of

Campo Band of Kumeyaay Indians' land proposed in Unit 9 from this critical habitat designation.

**Application of Section 4(b)(2)—Impacts to National Security**

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for reasons of national security if the Secretary determines the benefits of such an 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.

*Department of Defense—San Diego Air Force Space Surveillance Station*

We determined that approximately 109 ac (44 ha) of Air Force lands at the San Diego Air Force Space Surveillance Station (Surveillance Station), located in Unit 8, contain the features essential to the conservation of the Quino checkerspot butterfly, and therefore meet the definition of critical habitat under the Act. In making our final decision with regard to these Air Force lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the Air Force, existing consultations, and conservation measures in place at this facility that benefit the Quino checkerspot butterfly. Under section 4(b)(2) of the Act, we are excluding all Air Force Surveillance Station lands in Unit 8 containing features essential to the conservation of the Quino checkerspot butterfly from this final revised critical habitat designation. As described in our analysis below, we reached this determination in consideration of the impact to national security associated with the designation of critical habitat on these Air Force lands.

An endangered species management plan is in place at the Surveillance Station to conserve Quino checkerspot butterfly habitat. Activities at the station that reduce the risk of fire damage consist of occasional equipment inspection, equipment maintenance, and mowing, therefore conservation actions are relatively simple. Conservation measures included in the plan that benefit the Quino checkerspot butterfly and its habitat include (1) Monitoring Quino checkerspot butterfly occupancy and habitat status through protocol surveys that also document habitat quality, suitability, and the presence and abundance of host plants and nectar sources; (2) use of monitoring results to adopt management strategies that maintain and protect the Quino checkerspot butterfly; and (3) maintaining existing habitat onsite, including actions such as flagging and avoiding host plants prior to fire abatement activities, or utilizing the existing mowing program to maintain areas of low, open grassland most suitable for host plants. The Air Force is currently working on an INRMP for this facility that will incorporate the existing endangered species management plan. Quino checkerspot butterfly management efforts will continue to be implemented by the Air Force regardless of whether the Surveillance Station is designated as critical habitat.

In a letter received by the Service on March 20, 2008, the Air Force determined that critical habitat designation on Surveillance Station lands would impact national security. The mission of the Surveillance Station is to detect, track, and identify manmade objects in near-earth and deep-space orbits using a series of receiving stations equipped with linear antenna arrays. The Air Force expressed concern that designation of these lands could cause short-notice, national security, mission-critical activities to be delayed if they were required to conduct consultation due to a critical habitat designation. Short-notice, mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation and directly affect national security include equipment upgrades, some maintenance activities, and replacement of antennae. These activities require immediate ground disturbance in designated areas for new antennae construction or heavy equipment operation, and are not covered by the INRMP.

Benefits of Inclusion—Air Force Surveillance Station

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to insure actions they fund, authorize, or carry out are not likely to result in destruction or adverse modification of designated critical habitat, the regulatory standard under which consultation is completed.

These Air Force lands are within the habitat-based population distribution of the Otay Mountain Core Occurrence Complex (Unit 8). If surveys detect occupancy within a project footprint, then consultation would occur regardless of critical habitat designation, and the likelihood of this occurring within this occupied critical habitat unit is high. However, as discussed above in the ''Benefits of Designating Critical Habitat'' section, even in occupied habitat, surveys may not detect butterflies during any given flight season. Therefore, the conservation benefits of critical habitat designation are reduced but not negated by population occupancy in Unit 8.

The primary benefit of including these Air Force lands within a critical habitat designation is the requirement for consultation on actions that may adversely modify or destroy designated critical habitat; however, consultation on these lands, which are within the habitat-based population distribution of the Otay Mountain Core Occurrence Complex and are within the boundaries of previously designated Quino checkerspot butterfly critical habitat, has already been completed. The Service completed consultation with the Navy (prior landowner) regarding all current and foreseen mowing activity and issued a biological opinion concluding that all current and foreseen mowing activity is not likely to jeopardize the Quino checkerspot butterfly nor destroy or adversely modify its currently designated critical habitat (Service 2003, FWS–SDG–2511.3).

Another possible benefit of including lands in a critical habitat designation is that the designation can serve to educate the landowner and the public regarding the potential conservation value of an area, and this may help focus conservation efforts to identified areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed above, the Air Force is aware of the value of Surveillance Station lands to the conservation of the Quino checkerspot butterfly and currently implements management measures to conserve Quino checkerspot butterflies and their habitat. The Air Force is actively working with the Service and the CDFG to develop an INRMP that will ensure conservation of this subspecies on Surveillance Station lands. Further, all Surveillance Station lands were included in the proposed designation, which itself reached a wide audience. Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the Air Force on areas important to the long-term conservation of this subspecies) have largely already been realized by consultation, development of the management plan, development of the INRMP, and proposing these areas as critical habitat.

We believe designation of critical habitat would provide few, if any, additional regulatory and conservation benefits to the subspecies beyond those that will result from continued jeopardy consultation due to the continued commitment by the Air Force to manage its lands in a manner that promotes conservation of the Quino checkerspot butterfly and the coordination and management efforts demonstrated by the Air Force resulting from consultation and development of an INRMP.

Benefits of Exclusion—Air Force Surveillance Station

The benefits of excluding approximately 109 ac (44 ha) of Air Force lands are significant. The Air Force maintains and defends our national security at the Surveillance Station by detecting, tracking, and identifying man-made objects in near-earth and deep space orbits. As described above, the Air Force determined designation of Surveillance Station lands could delay short-notice national security mission-critical activities such as inspections/maintenance of antenna arrays and their components. Excluding these Air Force lands from critical habitat designation will remove the potentially significant impact that a designation of critical habitat could have on the Air Force's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Air Force Surveillance Station

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for Air Force Surveillance Station lands in Unit 8. We believe the benefits of designating these lands as Quino checkerspot butterfly critical habitat are small, whereas the benefits of excluding these lands from critical habitat will result in the removal of impacts to national security as determined by the Air Force. Therefore, we have determined the benefits identified above of excluding approximately 109 ac (44 ha) of Air Force Surveillance Station lands from the critical habitat designation outweigh the benefits of including these lands.

Exclusion Will Not Result in Extinction of the Species—Air Force Surveillance Station

We determined that the exclusion of the Air Force Surveillance Station lands from the final revised designation of critical habitat for the Quino checkerspot butterfly will not result in the extinction of the subspecies. While some loss of habitat for the Quino checkerspot butterfly is anticipated with the continued Air Force activities on Surveillance Station lands, we concluded in our biological opinion (Service 2003, FWS–SDG–2511.3) that mowing activity would not jeopardize the continued existence of this subspecies. Additionally, the current management and proposed management under the draft INRMP in development provides some protection and management of lands within Unit 8, including the physical or biological features essential to the conservation of the Quino checkerspot butterfly. Finally, the likelihood of future Federal nexuses on these Air Force lands resulting in consultations under the jeopardy standard of section 7(a)(2) of the Act that will ensure activities on these lands are not likely to jeopardize the continued existence of the subspecies provide assurances that the subspecies will not go extinct as a result of this exclusion. Therefore, based on the above discussion we are excluding approximately 109 ac (44 ha) of Air Force Surveillance Station lands proposed in Unit 8 from this critical habitat designation.

*Department of Defense—La Posta Mountain Warfare Training Facility*

We determined that approximately 2,463 ac (997 ha) of land owned or controlled by the United States Navy (Navy), or designated for its use, at the La Posta Mountain Warfare Training Facility (La Posta Facility), located in Unit 9, contain the features essential to the conservation of the Quino checkerspot butterfly, and meet the definition of critical habitat under the Act. In making our final decision with regard to these Navy lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the Navy, existing consultations, and conservation measures in place at this facility that benefit the Quino checkerspot butterfly. Under section 4(b)(2) of the Act, we are excluding all Navy La Posta Facility lands, and lands owned by the BLM designated for use as part of the La Posta Facility from this final revised critical habitat designation. As described in our section 4(b)(2) analysis below, we reached this determination in consideration of the impact to national security associated with the designation of critical habitat on these Navy lands.

The Navy Special Operations Forces train at the La Posta Facility before deploying to the United States Pacific and Central Commands in support of missions in the global war on terrorism. This warfare training facility supports mission-essential training for Navy troops prior to deployment into these hostile areas of the world. The La Posta Facility is currently the only semi-remote, Navy-controlled complex supporting Assault and Tactical Weapons Training, and the only San Diego region cold weather—mountain warfare site that provides training in unconventional warfare and special tactical intelligence. The Navy Special Operations Forces training schedule is extremely concentrated and does not allow for any shifting of training blocks. By Navy training policy, this site contains a remote range built specifically for the skill set required, is close to home, and is without distractions. Therefore, these lands have high national security value.

The Navy actively conserves the Quino checkerspot butterfly and its habitat at the La Posta Facility. Conservation measures pursuant to a biological opinion (FWS–SDG–4452) include a comprehensive Quino Habitat Enhancement Plan for the La Posta Facility. The Navy funds implementation of the Quino Habitat Enhancement Plan and consistent with the plan, the Navy: (1) Identifies areas containing important Quino checkerspot butterfly habitat features (e.g., host plants for breeding and hilltops for mating); (2) delineates Quino Management Area boundaries (based on mapping in #1); (3) implements specific management strategies, such as weed control, to conserve the subspecies; (4) avoids trampling of Quino checkerspot butterfly larvae, host plants, or cryptobiotic soil crusts in important habitat; (5) monitors Quino checkerspot butterfly habitat to detect any significant changes; (6) describes and implements larval salvage and release techniques; and (7) conducts surveys every 4 years to detect changes in the Quino checkerspot butterfly distribution.

In addition to the conservation measures described above, the Navy provided funding for The Nature Conservancy to purchase and manage approximately 138 ac (56 ha) of Quino checkerspot butterfly habitat adjacent to the La Posta Facility. Furthermore, the Navy has updated its Naval Base Coronado INRMP to address the Quino checkerspot butterfly and its habitat at the La Posta Facility and is awaiting approval by the Service. The INRMP will incorporate all conservation measures included in the current Quino checkerspot butterfly Habitat Enhancement Plan and address expansion plans for the La Posta Facility. Quino checkerspot butterfly management efforts will continue to be implemented by the Navy regardless of

whether the La Posta Facility is designated as critical habitat.

In a letter received by the Service on March 20, 2008, (see ''Comments From Other Federal Agencies'' section above) the Navy determined that critical habitat designation on La Posta Facility lands would affect national security. With the closure of several contract sites previously conducting Navy Sea, Air, and Land Forces unit level training, the La Posta facility is now the sole Navy training site in the San Diego region for developing small, well-trained and highly mobile independent operational units for deployment into combat. Designation of these lands as critical habitat could delay construction of facilities needed to support mission critical training vital to the current global war on terrorism and other missions related to national security. To support training requirements, there are a series of development projects being planned at the La Posta Facility including construction of a close-quarter combat training facility. Any delay in construction of facilities that support operational readiness would seriously affect personnel readiness by disrupting mission critical training and the ability to acquire and perform special warfare skills.

Benefits of Inclusion—Navy La Posta Facility

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to insure actions they fund, authorize, or carry out are not likely to result in destruction or adverse modification of designated critical habitat, the regulatory standard under which consultation is completed.

These Navy lands are within the habitat-based population distribution of the recently identified La Posta/Campo Core Occurrence Complex. If surveys detect occupancy within a project footprint, then consultation would occur regardless of critical habitat designation, and the likelihood of this occurring within this occupied critical habitat unit is high. However, as discussed above in the ''Benefits of Designating Critical Habitat'' section, even in occupied habitat, surveys may not detect butterflies during any given flight season. Therefore, the conservation benefits of critical habitat designation are reduced but not negated by population occupancy in Unit 9.

Additionally, the Service has already consulted with the Navy regarding all current construction activities at the La Posta Facility, including construction of the aforementioned close-quarters combat training facility, and issued a biological opinion (Service 2007; FWS–SDG–4452) concluding the proposed activities are not likely to jeopardize the continued existence of the Quino checkerspot butterfly. Conservation measures resulting from that consultation include the development of a comprehensive Quino Habitat Enhancement Plan discussed above. Critical habitat is not currently designated on these lands; therefore, the consultation did not include an adverse modification analysis. However, the Quino Habitat Enhancement Plan, if implemented long-term as described above, will conserve and enhance the physical and biological features essential to the conservation of the Quino checkerspot butterfly.

Another possible benefit of including lands in a critical habitat designation is that the designation can serve to educate the landowner and the public regarding the potential conservation value of an area, and this may help focus conservation efforts to identified areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed above, the Navy is aware of the value of La Posta Facility lands to Quino checkerspot butterfly conservation and currently implements management measures to conserve the subspecies and its habitat. The Navy is actively working with the Service and the CDFG to update the Naval Base Coronado INRMP to address Quino checkerspot butterflies and their habitat at the La Posta Facility. Further, all La Posta Facility lands were included in the proposed designation, which itself reached a wide audience. Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the Navy on areas important to the long-term conservation of this subspecies) have largely already been realized by consultation, development of the Habitat Enhancement Plan, development of the INRMP, and proposing these areas as critical habitat.

In light of continued Navy commitments to manage its lands in a manner that promotes conservation of the Quino checkerspot butterfly, we believe designation of critical habitat on these Navy lands would provide minimal additional regulatory and conservation benefits to the subspecies beyond those that will result from continued jeopardy consultation.

Benefits of Exclusion—Navy La Posta Facility

The benefits of excluding the approximately 2,463 ac (997 ha) of Navy lands are significant. The Navy maintains and defends our national security at the La Posta Facility by training highly specialized troops for deployment. As described above, it is possible that designation of La Posta Facility lands as critical habitat could delay construction schedules and thereby disrupt mission critical training and the Navy's ability to acquire and perform special warfare skills. Additional consultation under section 7 of the Act due to critical habitat designation could limit or otherwise delay or restrict the amount and timing of mission-critical training exercises. Excluding these Navy lands from the critical habitat designation will effectively remove the impact that a designation of critical habitat could have on the Navy's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Navy La Posta Facility

The benefits of including these Navy La Posta Facility lands in designation of critical habitat for the Quino checkerspot butterfly are small compared to the benefits of excluding these lands from critical habitat for the purposes of national security training efforts. Therefore, we determined the benefits identified above of excluding approximately 2,463 ac (997 ha) of Navy La Posta Facility lands from the critical habitat designation outweigh the benefits of including these lands in the designation.

Exclusion Will Not Result in Extinction of the Species—Navy La Posta Facility

In keeping with our analysis and conclusion detailed in our biological opinion for the Navy La Posta Facility (Service 2007; FWS–SDG–4452) and potential national security impacts identified by the Navy, we determined exclusion of 2,463 ac (997 ha) of land within the La Posta Facility from the final designation of critical habitat for the Quino checkerspot butterfly in Unit 9 will not result in the extinction of the subspecies. Additionally, the likelihood of future federal nexuses on these Federal lands resulting in consultations under the jeopardy standard of section 7(a)(2) of the Act that will ensure activities on these lands are not likely to jeopardize the continued existence of the subspecies provide assurances that the subspecies will not go extinct as a result of this exclusion. Therefore, based on the above discussion we are

excluding approximately 2,463 ac (997 ha) of land within the La Posta Facility proposed in Unit 9 from this critical habitat designation.

**Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships**

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for other relevant impacts 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. As discussed above in the ''Conservation Partnerships on Non-Federal Lands'' section, we believe that designation can negatively impact the working relationships and conservation partnerships we have formed with private landowners. The Service recognizes that 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002) and we will only achieve recovery of federally listed species with the cooperation of private landowners.

In making the following exclusions, we evaluated the benefits of designating these non-Federal lands while considering the conservation benefits to the Quino checkerspot butterfly and the physical or biological features essential to its conservation that result from our existing partnerships. As discussed in the ''Benefits of Designating Critical Habitat'' section above, conservation partnerships that result in implementation of an HCP or other management plan that considers enhancement or recovery as the management standard often provide as much or more benefit than consultation for critical habitat designation (the primary benefit of a designation).

In considering the benefits of including lands in a designation that are covered by a current HCP or other management plan, we evaluate a number of factors to help us determine if the plan provides additional conservation benefits than would likely result from consultation on a designation:

(1)Whether the plan is complete and provides protection from destruction or adverse modification;

(2)Whether there is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3)Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We balance the benefits of inclusion against the benefits of exclusion by considering the benefits of preserving partnerships and encouraging development of additional HCPs and other conservation plans in the future.

*San Diego County Multiple Species Conservation Program – Chula Vista Subarea Plan*

We determined approximately 1,673 ac (677 ha) of land in Unit 8 owned by or under the jurisdiction of the permittees of the City of Chula Vista (City) Subarea Plan of the San Diego County Multiple Species Conservation Program (MSCP) (Chula Vista Subarea Plan) contain the features essential to the conservation of the Quino checkerspot butterfly, and therefore meet the definition of critical habitat under the Act. In making our final decision with regard to these Chula Vista Subarea Plan lands owned by or under the jurisdiction of the permittees of the HCP, we considered several factors, including our relationship with the participating MSCP jurisdiction, our relationship with other MSCP stakeholders, existing consultations, conservation measures in place on these lands that benefit the Quino checkerspot butterfly, and impacts to current and future partnerships. We recognize the Quino checkerspot butterfly conservation efforts outlined in the Chula Vista Subarea Plan will continue to be implemented by the jurisdictions and HCP permit holders regardless of whether covered areas are designated as critical habitat. Under section 4(b)(2) of the Act, we are excluding all lands covered by the Chula Vista Subarea Plan that are owned by or are under the jurisdiction of the permittees of the HCP from this final revised designation of critical habitat. As described in our section 4(b)(2) analysis below, we have reached this determination in consideration of the impacts associated with designation of critical habitat on non-Federal lands covered by a management plan and on our effective working relationships with HCP permit holders.

The MSCP is a framework HCP that has been in place for more than a decade. The plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species (''covered species'') through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. Although not covered under the umbrella of the MSCP, the Quino checkerspot butterfly is a covered species under the Chula Vista Subarea Plan, which provides for the long-term conservation of this subspecies.

We approved the Chula Vista Subarea Plan, covering approximately 58,000 ac (23,472 ha) under the City's jurisdiction, through an incidental take permit issued on January 12, 2005. Within the Chula Vista Subarea Plan, approximately 1,673 ac (677 ha) meet the definition of critical habitat for the Quino checkerspot butterfly. The Chula Vista Subarea Plan includes the following goals: (1) To conserve covered species (including the Quino checkerspot butterfly) and their habitats through the assemblage and conservation of significant interconnected habitat cores and linkages (Preserve); (2) to provide funding for and management of the Preserve, including biological monitoring and adaptive management; and (3) to reduce or eliminate redundant Federal, State, and local natural resource regulatory and environmental review of individual projects by obtaining Federal and State take authorizations for 85 species (City of Chula Vista 2003, Section 1, p. 2).

The Chula Vista Subarea Plan contains requirements to monitor and adaptively manage Quino checkerspot butterfly habitats and therefore provides for conservation of this subspecies' essential physical and biological features. This area-specific management plan is comprehensive and addresses a broad range of management needs at the preserve and species levels intended to reduce threats to the Quino checkerspot butterfly and thereby contribute to its recovery. The Quino checkerspot butterfly is threatened primarily by loss and fragmentation of habitat and landscape connectivity due to urban and agricultural development, invasion of nonnative plant species, off-road vehicle use, grazing, fire, enhanced soil nitrogen levels, and range shift resulting from environmental changes associated with changing climate patterns (Service

2003a, pp. 55–65). All lands preserved under the Chula Vista Subarea Plan are adaptively managed and maintained to: (1) Ensure the long-term viability and sustainability of native ecosystem function and natural processes throughout the Preserve; (2) protect existing and restored biological resources from the impacts of human activities within the Preserve while accommodating compatible uses; (3) enhance and restore, where feasible, appropriate native plant associations and wildlife connections to adjoining habitat to provide viable wildlife and sensitive species habitat; (4) facilitate monitoring of selected target species, habitats, and linkages to ensure long-term persistence of viable populations of priority plant and animal species (including the Quino checkerspot butterfly); and (5) ensure functional habitats and linkages for those species (Service 2003b, pp.18, 70, FWS–SDG–882.1). Quino checkerspot butterfly management efforts will continue to be implemented by the City regardless of whether these areas are designated as critical habitat.

We determined that approximately 1,673 ac (677 ha) of land within the boundaries of the Chula Vista Subarea Plan contain the physical or biological features essential to the conservation of the Quino checkerspot butterfly, and therefore meet the definition of critical habitat. The City has assured the conservation of approximately 1,520 ac (615 ha) (91 percent) of those lands in the ''hard line areas designated for 100 percent conservation'' where no additional development will be approved unless a Boundary Adjustment or HCP Amendment is approved by the Service (City of Chula Vista 2003, pp. 5–2 to 5–3, Figure 5–1). In implementing the Chula Vista Subarea Plan, the City has already conserved approximately 894 ac (362 ha), or 59 percent, of those 1,520 ac (615 ha), and the remaining approximate 626 ac (253 ha) are assured conservation under the Plan. The extent of habitat preservation and management to date through implementation of the Chula Vista Subarea Plan is significant and demonstrates the City's commitment to fully implement the HCP.

The other 164 ac (66 ha) that meet the definition of critical habitat within the boundaries of the Chula Vista Subarea Plan were not originally assured conservation. However, through the adaptive management flexibility of the Chula Vista Subarea Plan, the City has already placed approximately 28 ac (11 ha) of those 164 ac (66 ha) into the habitat preserve system conserved and managed under the HCP. These approximately 28 ac (11 ha) are already receiving management consistent with the goals and objectives of the Chula Vista Subarea Plan. The remaining approximately 136 ac (55 ha) of land that contain the physical or biological features essential to the conservation of the species within the boundaries of the Chula Vista Subarea Plan (less than one percent of Unit 8) are not currently assured conservation; however, any impacts to those 136 ac (55 ha) will still be subject to the requirements of the Chula Vista Subarea Plan. Furthermore, under the Chula Vista Subarea Plan, development projects must avoid impacts to the Quino checkerspot butterfly to the maximum extent practicable in areas not identified for conservation (McNeeley 2008, p. 1). Current development plans indicate that these remaining lands are planned for recreational use, and there will continue to be opportunities to preserve some native habitat in these areas. Although some losses may occur to this subspecies within the approximate 136 ac (55 ha) of land that are not currently preserved or otherwise assured conservation under the Chula Vista Subarea Plan, the preservation, conservation, and management of the Quino checkerspot butterfly provided under the subarea plan provides a more comprehensive ecosystem-based approach to protecting and managing Quino checkerspot butterfly habitat and ensures the long-term conservation of this subspecies and its habitat within all areas addressed by this HCP than would be achieved through consultation for critical habitat designation (the primary benefit of a designation).

The MSCP and the Chula Vista Subarea Plan incorporate many processes that allow for Service oversight and participation in program implementation. These processes include: annual reporting requirements, review and approval of proposed subarea plan amendments or preserve boundary adjustments, review and comment on projects through CEQA, and chairing the Habitat Management Technical Committee and the Monitoring Subcommittee (MSCP 1998, p. 5–11 to 5–23). For example, Habitat Management Plans are developed for each preserve area within the Chula Vista Subarea Plan, and annual monitoring and management objectives are reported for each preserve. There are also monthly coordination meetings between the Service and the City to discuss any conservation issues that need to be addressed. The MSCP and the Chula Vista Subarea Plan annually account for progress that occurs. Annual reports from each HCP are provided to the Service, which include by individual project and cumulatively, habitat acreage destroyed and conserved within the MSCP and its respective subareas. This accounting process ensures habitat conservation proceeds in rough proportion with losses and is in compliance with the MSCP subarea plans and associated implementing agreements.

In summary, although not all lands meeting the definition of critical habitat for the Quino checkerspot butterfly owned by or under the jurisdiction of the permittees of the Chula Vista Subarea Plan of the MSCP are assured conservation within the Chula Vista Subarea Plan preserve system (136 ac (55 ha) not protected, see above), the majority (91 percent) of these approximately 1,673 ac (677 ha) are assured conservation.

We received letters during the comment periods indicating designation of lands covered by an HCP as critical habitat would affect our relationships with large private landowners and stakeholders. Furthermore, designation would discourage development of additional HCPs and other conservation plans in the future.

Benefits of Inclusion—Chula Vista Subarea Plan

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed.

The MSCP addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act) and will achieve more Quino checkerspot butterfly conservation within the Chula Vista Subarea Plan boundaries than would be achieved through section 7 consultations involving consideration of critical habitat. The MSCP and Chula Vista Subarea Plan provide for proactive monitoring and management of preserved lands (as previously described), which will remove or reduce known threats to the Quino checkerspot butterfly and its PCEs. The physical and biological features essential to the conservation of the Quino checkerspot butterfly will benefit from the preservation of high quality habitat;

restoration, enhancement, and management of all preserve lands; minimization of project impacts; education of the public and state and local governments; and continued promotion of partnerships on lands owned by or under the jurisdiction of the permittees of the HCP. Conservation and management of Quino checkerspot butterfly habitat within the Chula Vista Subarea Plan boundaries is needed for survival and recovery of this subspecies. Meeting such conservation needs on a regional scale, as can be provided through a regional HCP approach that includes areas not likely to have a Federal nexus, typically is not achieved through the application of the statutory prohibition on adverse modification or destruction of critical habitat.

Furthermore, 91 percent of all lands within the boundaries of the Chula Vista Subarea Plan proposed for designation that are owned by or are under the jurisdiction of the permittees of the HCP is within the boundaries of formerly designated Quino checkerspot butterfly critical habitat. The Service completed consultation on the Chula Vista Subarea Plan and continues to work closely with the City to ensure the Plan is implemented properly and in a manner that contributes to the conservation of the Quino checkerspot butterfly.

We believe some habitat loss may occur within the approximate 136 ac (55 ha) of land that contain the physical or biological features essential to the conservation of the species that are not currently preserved or otherwise assured conservation under the Chula Vista Subarea Plan. Therefore, the benefits of including these lands within designated critical habitat are greater than for the lands not conserved or assured conservation under the Chula Vista Subarea Plan. However, the area permitted for development is less than one percent of proposed critical habitat in Unit 8, and the overall conservation benefits of designating this small percentage of the unit as critical habitat (e.g., protection afforded through the section 7(a)(2) consultation process) to the Quino checkerspot butterfly are minimal.

Another possible benefit of including lands in a critical habitat designation is that the designation can serve to educate the landowners and the public regarding the potential conservation value of an area and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience is valuable, including parties engaged in conservation activities. As discussed above, the permit holders of the Chula Vista Subarea Plan are aware of the value of these lands to conservation of the Quino checkerspot butterfly and management measures are in place to conserve Quino checkerspot butterflies and their habitat. The Service was a partner in the development of the Chula Vista Subarea Plan and consultation was completed on the issuance of the 10(a)(1)(B) permit. The process of developing the MSCP and Chula Vista Subarea Plan involved numerous partners including (but not limited to) the 12 participating jurisdictions, the CDFG, and several Federal agencies. Furthermore, all lands were included in the proposed revised designation published in the **Federal Register** on January 17, 2008 (73 FR 3328). This publication was announced by way of a press release and information was posted on the Service's website, which ensured the proposal reached a wide audience. Therefore, the educational benefits of critical habitat designation (such as providing information to the City and other stakeholders on areas important to the long-term conservation of this subspecies) have largely already been realized through the HCP development process, by proposing these areas as critical habitat, and through the Service's public notification processes.

Specific conservation actions, avoidance and minimization measures, and management for the Quino checkerspot butterfly and its PCEs provided by the Chula Vista Subarea Plan should make conservation measures required as a result of regulatory protections afforded through a critical habitat designation unlikely. Based on the above discussion we believe section 7 consultations for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision provide little conservation benefits above and beyond those provided by the Chula Vista Subarea Plan. Therefore, we determine the regulatory and educational benefits of designating those acres as Quino checkerspot butterfly critical habitat (e.g., protection afforded through the section 7(a)(2) consultation process) are minimal.

Benefits of Exclusion—Chula Vista Subarea Plan

The benefits of excluding the approximate 1,673 ac (677 ha) of land within the boundaries of the Chula Vista Subarea Plan of the MSCP owned by or under the jurisdiction of the permittees of the HCP from designated critical habitat are significant. We believe significant benefits would be realized by forgoing designation of critical habitat on these lands including: (1) Continuance and strengthening of our effective working relationships with all MSCP jurisdictions and stakeholders to promote conservation of the Quino checkerspot butterfly and its habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward recovering this subspecies, including conservation benefits that might not otherwise occur; (3) encouragement of other jurisdictions with completed subarea plans under the MSCP to amend its plans to cover and benefit the Quino checkerspot butterfly and its habitat; (4) the encouragement for other jurisdictions to complete subarea plans under the MSCP (e.g., including the cities of Coronado, Del Mar, El Cajon, and Santee); and (5) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

We developed close partnerships with the City and several other stakeholders through the development of the Chula Vista Subarea Plan, which incorporates appropriate protections and management for the Quino checkerspot butterfly, its habitat, and the physical or biological features essential to the conservation of this subspecies. Those protections are consistent with statutory mandates under section 7 of the Act to avoid destruction or adverse modification of critical habitat and go beyond that requirement by including active management and protection of connected habitat areas. By excluding these approximately 1,673 ac (677 ha) of land from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the Chula Vista Subarea Plan in this area, helping to preserve our ongoing partnership with the City, and encouraging new partnerships with other landowners and jurisdictions. This partnership with the City, the larger regional MSCP participants, and the landscape level, multiple-species conservation planning efforts they promote are needed to achieve long-term conservation of the Quino checkerspot butterfly.

Large scale HCPs, such as the regional MSCP and subarea plans issued under its framework, take many years to develop and foster an ecosystem-based approach to habitat conservation planning by addressing conservation issues through a coordinated approach. However, participation in these large and often costly regional plans are voluntary for permit holders (such as

local jurisdictions), in the sense they could require landowners (e.g., homeowners, developers) to consult with the Service individually for required permits under section 10 of the Act. If, in the case of the MSCP, local jurisdictions required landowners to obtain section 10 permits individually prior to issuance of a building permit, they would incur no costs associated with the landowner's need for a section 10 permit. However, this approach results in uncoordinated, ''patchy'' conservation that would not be likely to further federally listed species' recovery. Rather, by voluntarily developing these large scale plans, coordinated landscape-scale conservation results in preservation of interconnected linkage areas and populations that support recovery of listed species. Once an HCP is permitted, implementation of conservation measures will occur regardless of whether critical habitat is designated within its plan boundaries.

We received letters commenting on the designation of critical habitat from other HCP permit holders, private landowners, and stakeholders in HCPs indicating designation of lands covered by an HCP as critical habitat would affect our relationships with large private landowners, jurisdictions, and tribal governments. Furthermore, designation would discourage development of additional HCPs and other conservation plans in the future. Excluding lands owned by or under the jurisdiction of the permittees of an HCP within the boundary of an HCP demonstrates our good faith effort and working relationships, and eliminates impacts to existing and future partnerships while encouraging development of additional HCPs and other species or habitat conservation plans.

The Benefits of Exclusion Outweigh the Benefits of Inclusion—Chula Vista Subarea Plan

We reviewed and evaluated the exclusion of approximately 1,673 ac (677 ha) of land within the Chula Vista Subarea Plan owned by or under the jurisdiction of the permittees of the HCP from revised designation of critical habitat and determined the benefits of excluding these lands outweigh the benefits of including them.

The benefits of including these lands in the designation are small. Critical habitat is currently designated in 91 percent of lands covered by the Chula Vista Subarea Plan, and the Service conducted a consultation with the City and continues to work with them through the implementation phase to ensure the HCP is implemented properly and providing conservation for the Quino checkerspot butterfly. The eight percent of lands (136 ac; 55 ha) on which critical habitat was not previously designated are not assured conservation under the Chula Vista Subarea Plan. However, current development plans indicate that these remaining lands are planned for recreational use, and opportunities will exist to continue to preserve some native habitat in these areas while developing and allowing recreational use. In areas not conserved by the Chula Vista Subarea Plan, development projects must still avoid impacts to the Quino checkerspot butterfly to the maximum extent practicable (McNeeley 2008, p. 1). The City has already placed approximately 28 ac (11 ha) of land under conservation outside of the requirements of its subarea plan. The educational benefits of critical habitat designation have largely already been realized as a result of material provided on our website, through the public notice-and-comment procedures required to establish the MSCP and City and County subarea plans, and by proposal of these lands for designation as revised critical habitat. Therefore, although we acknowledge that there are approximately 136 ac (55 ha) addressed by the Chula Vista Subarea Plan that meet the definition of critical habitat and are not assured conservation (at risk for development), we believe that the benefits of including these areas in the critical habitat designation would be minor.

In contrast to the benefits of inclusion, the benefits of excluding lands covered by the Chula Vista Subarea Plan from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnerships we developed with local jurisdictions and project proponents in the development of the MSCP and Chula Vista Subarea Plan and aid in fostering additional partnerships for the benefit of all species of concern on lands owned by or under the jurisdiction of the permittees of the HCP. Designation of lands covered by the Chula Vista Subarea Plan may discourage other partners from seeking, amending, or completing subarea plans under the MSCP framework plan or from pursing other HCPs. Designation of critical habitat does not require management or recovery actions take place on the lands included in the designation. The Chula Vista Subarea Plan, however, will provide for significant preservation and management of Quino checkerspot butterfly habitat and help reach the recovery goals for this subspecies through habitat enhancement and restoration; functional connections to adjoining habitat; and subspecies monitoring efforts. Additional HCPs or other species–habitat plans potentially fostered by this exclusion would also help to recover this and other federally listed species. Therefore, in consideration of the relevant impact to current and future partnerships, as summarized in the ''Conservation Partnerships on Non-Federal Lands'' section above, we determined significant benefits of exclusion outweigh the minor benefits of critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Chula Vista Subarea Plan

In keeping with our analysis and conclusion detailed in our biological opinion for the Chula Vista Subarea Plan (Service 2003b, FWS–SDG–882.1), we determined that the exclusion of approximately 1,673 ac (677 ha) of land within the Chula Vista Subarea Plan area owned by or under the jurisdiction of the permittees of the HCP from the final designation of critical habitat for the Quino checkerspot butterfly will not result in extinction of the Quino checkerspot butterfly. The Chula Vista Subarea Plan provides protection and management, in perpetuity, of lands that meet the definition of critical habitat for the subspecies in Unit 9. Additionally, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process provide assurances that the subspecies will not go extinct as a result of exclusion. Therefore, based on the above discussion we are excluding approximately 1,673 ac (677 ha) of land within the Chula Vista Subarea Plan area owned by or under the jurisdiction of the permittees of the HCP from this critical habitat designation.

*Western Riverside County Multiple Species Habitat Conservation Plan*

We determined that approximately 31,852 ac (12,890 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP contain the features essential to the conservation of the Quino checkerspot butterfly, and meet the definition of critical habitat under the Act. Our exclusion analysis did not include lands within the boundaries of the Western Riverside County MSHCP that are not owned by or otherwise under the jurisdiction of permittees and therefore not subject to the permit

conditions of this HCP (e.g. Federal lands, Metropolitan Water District of Southern California lands, tribal lands). In making our final decision with regard to these lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP, we considered several factors including our relationships with the participating jurisdictions, our relationships with other stakeholders, existing consultations, conservation measures in place on these lands that benefit the Quino checkerspot butterfly, and impacts to current and future partnerships. We recognize Quino checkerspot butterfly conservation efforts outlined in the Western Riverside County MSHCP will continue to be implemented regardless of whether covered areas are designated as revised critical habitat. Under section 4(b)(2) of the Act, we are excluding all 27,465 ac (11,115 ha) of land meeting the definition of critical habitat covered by the Western Riverside County MSHCP within Units 1 through 6 that are owned by or under the jurisdiction of the permittees from this revised final designation of critical habitat. Conversely, within Unit 7, we are designating all lands meeting the definition of critical habitat covered by the Western Riverside County MSHCP that are owned by or are under the jurisdiction of the permittees (4,141 ac (1,676 ha)). As described in our section 4(b)(2) analysis below, we reached these determinations in consideration of the impacts associated with the designation of revised critical habitat on lands owned by or under the jurisdiction of the permittees of the HCP covered by the HCP balanced against the benefits of including an area in the final designation.

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including the Quino checkerspot butterfly. Participants in the MSHCP include 14 cities; the County of Riverside (including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department); California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP is a multi-species conservation program minimizing and mitigating expected loss of habitat and associated incidental take of covered species. On June 22, 2004, the Service issued an incidental take permit (Service 2004a, TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years.

The Western Riverside County MSHCP requires conservation of approximately 153,000 ac (61,916 ha) of new lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public–Quasi-Public (PQP) lands). PQP lands include those under Federal ownership, primarily managed by the Forest Service and BLM, and also permittee-owned or privately-owned open-space areas under the jurisdiction of the permittees of the Western Riverside County MSHCP, primarily managed by the State and Riverside County. Collectively. The Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the approximately 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified (''hard-lined'') in the Western Riverside County MSHCP, but rather is based on textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of an approximately 310,000-ac (125,453-ha) Criteria Area interpreted as implementation of the Western Riverside County MSHCP takes place.

Quino checkerspot butterfly conservation goals under the Western Riverside County MSHCP include protection (Additional Reserve Lands and PQP, including Federal lands) of at least 67,493 ac (27,314 ha) of subspecies' habitat mosaic. The conservation acreage goal will be achieved through acquisition or other dedications of land assembled from within the Criteria Area (the Additional Reserve Lands) and through coordinated management of existing PQP lands. We internally mapped a ''Conceptual Reserve Design'' that illustrates existing PQP lands and predicts an ideal geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals. Our Conceptual Reserve Design was intended to predict one possible future configuration of the eventual approximately 153,000 ac (61, 916 ha) of Additional Reserve Lands in conjunction with the existing PQP lands, including approximately 67,493 ac (27,314 ha) of ''suitable'' Quino checkerspot butterfly habitat throughout the plan area, that will be conserved to meet the goals and objectives of the plan (Service 2004a, p. 73; FWS–WRIV–870.19).

Preservation and management of approximately 67,493 ac (27,314 ha) of Quino checkerspot butterfly habitat under the Western Riverside County MSHCP will contribute to conservation and ultimate recovery of this subspecies. The Quino checkerspot butterfly is threatened primarily by loss and fragmentation of habitat and landscape connectivity due to urban and agricultural development, invasion of nonnative plant species, off-road vehicle use, grazing, and fire, enhanced soil nitrogen levels, and range shift resulting from environmental changes due to changing climate patterns (Service 2003a, pp. 55–65). The Western Riverside County MSHCP removes or reduces threats to this subspecies and the features essential to its conservation by placing large blocks of occupied and unoccupied habitat into preservation throughout the MSHCP Conservation Area. Areas identified for preservation and conservation include linkages of suitable Quino checkerspot butterfly habitat between the 7 ''Core Areas'' to maintain landscape connectivity and support the population dynamics of this subspecies. The approximately 67,493 ac (27,314 ha) that will be conserved under this plan for the Quino checkerspot butterfly capture a variety of habitat characteristics supporting Quino checkerspot butterflies throughout western Riverside County. Distribution of the subspecies within the existing Western Riverside County MSHCP Conservation Area is documented through annual surveys. Surveys will continue annually as lands are added to the Conservation Area. The surveys are intended to verify continued occupancy at a minimum of 75 percent of the occupied locations identified in the plan. An adaptive management program is being implemented to maintain or enhance all conserved habitat to increase its value for, and the viability of, Quino checkerspot butterfly populations (Dudek 2003, Volume I, Section 9, Table 9–2, pp. 9–28, 9–29). Quino checkerspot butterfly conservation and management efforts will continue to be implemented under this plan regardless of whether these areas are designated as revised critical habitat.

We determined that approximately 31,852 ac (12,890 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP meet the definition of critical habitat for the Quino

checkerspot butterfly. These lands are divided into 7 units, each associated with a core occurrence complex habitat-based population distribution as identified in this final rule. Our analysis of additional survey data and distribution information not available at the time the Western Riverside County MSHCP was developed identified a new core occurrence complex, the Bautista Road Core Occurrence Complex (Unit 7). Therefore permittees can meet the goals and objectives of the plan as written for this subspecies without conserving significant portions of the permittee-owned or open-space areas that are essential for the conservation of the species in Unit 7. Due to the identification of a new core occurrence complex (Unit 7) mostly outside the HCP conservation design, we evaluated the benefits of including (if the Western Riverside County MSHCP conservation design provides equivalent or greater conservation benefit to Quino checkerspot butterfly and its habitat than would likely result from consultation on a designation) the lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 separately from our evaluation of the benefits of designating Units 1 through 6.

Conservation Status of Units 1 through 6 Western Riverside County MSHCP

Units 1 through 6 contain approximately 27,465 ac (11,115 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP. Our analysis identified four basic conservation status categories of land under the jurisdiction of the permittees of the Western Riverside County MSHCP: (1) Conserved as Public/Quasi-Public or as Additional Reserve Lands (already in Conservation Area); (2) likely to be conserved as indicated by our Conceptual Reserve Design (targeted as Additional Reserve Lands); (3) possible, but not likely, conservation within the defined Criteria Area (not captured by our Conceptual Reserve Design), and (4) no possibility of conservation under the HCP (outside the defined Criteria Area).

In the 4 years of implementing the Western Riverside County MSHCP approximately 1,956 ac (792 ha) of land within Units 1 through 6 have already been placed into the Conservation Area and are permanently preserved as Additional Reserve Lands, and 2036 ac (ha) were already conserved prior to HCP implementation. Although some areas placed in conservation are not yet fully managed, such management will occur as the plan continues to be implemented. Our Conceptual Reserve Design indicates that another approximately 17,302 ac (7,002 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6 (approximately 63 percent) will likely be conserved as Additional Reserve Lands. The extent of habitat preservation that has taken place to date through implementation of the Western Riverside County MSHCP is significant and demonstrates the permittees' commitment to fully implement the plan.

In Units 1 through 6, approximately 5,851 ac (2,368 ha) that meet the definition of critical habitat owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP are within the Criteria Area but were not captured by our Conceptual Reserve Design. A substantial portion of these lands occur in Unit 6 (approximately 2,819 ac (951 ha)). Condition 12 of the Special Terms and Conditions for Incidental Take Permit TE–088609–0 specifically identifies Unit 6 for additional conservation by requiring the permittees to ''work to conserve the Quino checkerspot butterfly within the Tule Creek—Anza Valley Subunit of the REMAP Area (Tule Peak/Silverado Core Occurrence Complex) and, if necessary, to use the Criteria Refinement Process to achieve this conservation'' (Service 2004b, p. 2, TE–088609–0). The Western Riverside County Regional Conservation Authority (permittee under the Western Riverside County MSHCP) has demonstrated its willingness and commitment to conserve lands needed for subspecies' recovery that are not otherwise targeted for conservation by plan criteria. In 2008, approximately 396 ac (160 ha) of occupied habitat all or partly outside of our Conceptual Reserve Design, but within the Criteria Area, were acquired as Additional Reserve Lands within the Tule Peak/Silverado Core Occurrence Complex (Unit 6). These lands were acquired specifically for the conservation of the Quino checkerspot butterfly.

Approximately 319 ac (129 ha) of land within Unit 2 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP that meet the definition of critical habitat occur outside of the Criteria Area and are not already conserved. These areas all occur on the outer edges of Unit 2 and represent only 3 percent of the unit. Although some losses may occur to this subspecies within these lands, we believe the losses are minimal and the preservation, conservation, and management of the Quino checkerspot butterfly provided for by this plan ensures sufficient long-term conservation of this subspecies and its habitat in Units 1 through 6.

The Western Riverside County MSHCP incorporates many processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on a long-term management and monitoring plan; (2) submission of annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004b, p. 9–10, TE–088609–0).

In summary, although not all lands proposed as revised critical habitat within Units 1 through 6 are targeted for preservation as Additional Reserve Lands within the Western Riverside County MSHCP or have already been officially dedicated to the preserve system, continued implementation of the MSHCP will result in the majority of these lands being conserved.

Benefits of Inclusion—Units 1 through 6 Western Riverside County MSHCP

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed.

The Western Riverside County MSHCP addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act) and will achieve more Quino checkerspot butterfly conservation than would be achieved through section 7 consultations involving consideration of critical habitat. The Western Riverside County MSHCP provides for proactive monitoring and management of preserved lands (as previously described), which remove or reduce known threats to the Quino checkerspot butterfly and its PCEs and therefore preclude or reduce the need for additional conservation provided by section 7 consultations due to critical habitat designation. The physical and biological features essential to the conservation of the Quino checkerspot butterfly will benefit from the preservation of high quality habitat and management of all preserve lands; minimization of project impacts; education of the public and state and

local governments; and continued promotion of partnerships on lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP. Conservation and management of Quino checkerspot butterfly habitat within the Western Riverside County MSHCP boundaries is needed for survival and recovery of this subspecies. Meeting such conservation needs on a regional scale, as can be provided through a regional HCP approach that includes areas that likely do not have a Federal nexus typically is not achieved through the application of the statutory prohibition on adverse modification or destruction of critical habitat alone, and are otherwise largely redundant.

Furthermore, the HCP preserve lands are within the habitat-based population distributions of six core occurrence complexes and approximately 90 percent of all land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP proposed for designation in Units 1 through 6 is within the boundaries of formerly designated Quino checkerspot butterfly critical habitat. The Service completed consultation on the Western Riverside County MSHCP and continues to work with plan participants to ensure the Plan is implemented properly and in a manner that contributes to the conservation of the Quino checkerspot butterfly.

We believe some losses may occur to the Quino checkerspot butterfly habitat within the approximately 5,851 ac (2,368 ha) that are within the Criteria Area but were not captured by our Conceptual Reserve Design and the approximately 319 ac (129 ha) of land that will not be conserved under the Western Riverside County MSHCP (outside the Criteria Area). Therefore, the benefits of including these lands within designated critical habitat is higher than for the lands that are conserved or targeted for conservation under the Western Riverside County MSHCP. However, the area that will not be conserved under the Western Riverside County MSHCP is less than one percent of proposed revised critical habitat in Units 1 through 6, and the area not captured by our Conceptual Reserve Design is less than 12 percent of proposed revised critical habitat in Units 1 through 6 (including land not owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP). Therefore the benefits for the conservation of the Quino checkerspot butterfly that would occur as a result of designating this small percentage as critical habitat (e.g., protection afforded through the section 7(a)(2) consultation process) are minimal.

Another possible benefit of including lands in a critical habitat designation is the designation can serve to educate the landowners and the public regarding the potential conservation value of an area, and this may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. As discussed above the permit holders of the Western Riverside County MSHCP are aware of the value of these lands to the conservation of the Quino checkerspot butterfly and management measures are in place to conserve Quino checkerspot butterflies and their habitat. The Service was a partner in the development of the Western Riverside County MSHCP and consultation was completed on the issuance of the 10(a)(1)(B) permit. The process of developing the Western Riverside County MSHCP has involved numerous partners including (but not limited to): 14 cities in western Riverside County; the County of Riverside; the California Department of Parks and Recreation; and the California Department of Transportation; and several Federal agencies. Furthermore, the majority of lands in Units 1–6 were previously designated as critical habitat (67 FR 18356, April 15, 2002; Table 1) and all lands were included in the proposed revised designation, which was published in the **Federal Register** on January 17, 2008 (73 FR 3328). These publications were announced in a press release and information was posted on the Service's website, which ensured the proposal reached a wide audience. No substantial new information regarding additional habitat areas essential to the conservation of Quino checkerspot butterfly in Units 1-6 was provided in the proposed revisions to critical habitat (see ''**Summary of Changes From the 2008 Proposed Rule To Revise Critical Habitat**'' section above). Therefore, the educational benefits that might follow critical habitat designation (such as providing information to the permittees and other stakeholders on areas important to the long-term conservation of this subspecies) have largely already been realized for these units on multiple occasions by: (1) HCP development; (2) designating these areas as critical habitat; (3) proposing these areas as revised critical habitat; and (4) through the Service's other public notification processes.

Specific conservation actions, avoidance and minimization measures, and management for the Quino checkerspot butterfly and its PCEs provided by the Western Riverside County MSHCP should make most conservation measures required as a result of regulatory protections afforded through a critical habitat designation unlikely. Based on the above discussion we believe section 7 consultations for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision provide little conservation benefits above and beyond those provided by the Western Riverside County MSHCP. Therefore, we determine the regulatory and educational benefits of designating those acres as Quino checkerspot butterfly critical habitat (e.g., protection afforded through the section 7(a)(2) consultation process) are minimal.

Benefits of Exclusion—Units 1 through 6 Western Riverside County MSHCP

The benefits of excluding the approximate 27,465 ac (11,115 ha) of land within Units 1 through 6 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP from designated critical habitat are significant. We believe significant benefits would be realized by forgoing the designation of critical habitat on these lands including: (1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP permittees and stakeholders to promote further conservation of the Quino checkerspot butterfly and its habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward recovering this subspecies, including conservation benefits that might not otherwise occur; and (3) encouragement of development of additional HCPs and other conservation plans in the future on other private lands for this and other federally listed and sensitive species.

We developed close partnerships with the all permittees under the Western Riverside County MSHCP (represented by the Riverside Conservation Authority) and several other stakeholders through the development of this large scale HCP, which incorporates appropriate protections and management for the Quino checkerspot butterfly, its habitat, and the physical and biological features essential to the conservation of this subspecies. Those protections are consistent with statutory mandates under section 7 of the Act to avoid adverse modification or destruction of

critical habitat and go beyond that prohibition by including active management and protection of connected habitat areas. By excluding approximately 27,465 ac (11,115 ha) of land in Units 1 through 6 from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the Western Riverside County MSHCP in this area, helping to preserve our ongoing partnership with the represented city and county governments, and encouraging new partnerships with other landowners and jurisdictions. This partnership with regional participants and the landscape level, multiple-species conservation planning efforts it promotes, are integral to achieving long-term conservation of the Quino checkerspot butterfly.

Large scale regional HCPs, such as the Western Riverside County MSHCP take many years to develop and foster an ecosystem-based approach to habitat conservation planning by coordinating conservation issues with regional planning efforts. However, participation in these large and often costly regional plans is voluntary for permit holders (such as local jurisdictions), in the sense these permit holders could require landowners (e.g., homeowners, developers) to consult with the Service individually for required section 10 permits. If, in the case of the Western Riverside County MSHCP, the local jurisdictions required landowners to obtain section 10 permits individually prior to issuance of a building permit, these jurisdictions would incur no costs associated with the landowner's need for a section 10 permit. However, this approach would result in uncoordinated, ''patchy'' conservation that would not be likely to further the recovery of federally listed species. Rather, by voluntarily developing these large scale plans, the coordinated landscape-scale conservation results in preservation of interconnected linkage areas and populations that support recovery of listed species. We recognize that once an HCP is permitted, implementation of conservation measures will occur regardless of whether critical habitat is designated within plan boundaries in order for permittees to receive incidental take coverage.

We received multiple letters commenting on the proposed revised designation of critical habitat from Western Riverside County MSHCP permit holders, private landowners and other stakeholders in this HCP indicating designation of lands covered by an HCP as critical habitat would affect our relationships with them. Furthermore, designation would discourage development of additional HCPs and other conservation plans in the future. Excluding lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP demonstrates our good faith effort and working relationships and will eliminate impacts to existing and future partnerships while encouraging development of additional HCPs and other species or habitat conservation plans.

The Benefits of Exclusion Outweigh the Benefits of Inclusion—Units 1 through 6 Western Riverside County MSHCP

We reviewed and evaluated the exclusion of approximately 27,465 ac (11,115 ha) of land within Units 1 through 6 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP from designation of revised critical habitat and determined the benefits of excluding these lands within the boundaries of the HCP outweigh the benefits of including them.

The benefits of including these lands in final revised critical habitat are small. Critical habitat is currently designated on approximately 90 percent of the proposed lands in Units 1 through 6 covered by the Western Riverside County MSHCP. The Service conducted a consultation with the Western Riverside County MSHCP participants and continues to work with them through the implementation phase to ensure the HCP is implemented properly and providing conservation for the Quino checkerspot butterfly. The educational benefits of critical habitat designation are already in place as a result of material provided on our website, the public notice-and-comment procedures required to establish the Western Riverside County MSHCP, and our inclusion of these lands in the proposed rule to revise critical habitat. We acknowledge that there are approximately 5,851 ac (2,368 ha) of land meeting the definition of critical habitat that are within the Criteria Area but were not captured by our Conceptual Reserve Design (and therefore not likely to be conserved), and approximately 319 ac (129 ha) of land outside the Criteria Area addressed by the Western Riverside County MSHCP that meet the definition of critical habitat but are not within criteria cells or already conserved (no possible conservation under the HCP) in Units 1 through 6; however, the benefits of designating these areas as critical habitat are minor.

The benefits of excluding lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6 from critical habitat are more significant than the benefits of including them. Exclusion of these lands from critical habitat will help preserve our partnerships with the local jurisdictions and project proponents achieved through development of the Western Riverside County MSHCP and aid in fostering additional partnerships for the benefit of all species of concern on lands owned by or under the jurisdiction of the permittees of the HCP. Designation of lands covered by the Western Riverside County MSHCP may also discourage other partners from pursuing HCPs or conservation plans. Designation of critical habitat does not require management or recovery actions take place on the lands included in the designation. The Western Riverside County MSHCP, however, will provide for significant preservation and management of habitat for the Quino checkerspot butterfly and will help reach the recovery goals for this subspecies through habitat enhancement and restoration, functional connections to adjoining habitat, and monitoring efforts. Future HCPs or other species or habitat plans fostered by this exclusion would also help to recover this and other federally listed species. Therefore, in consideration of the relevant impacts to current and future partnerships, as summarized above and in the ''Conservation Partnerships on Non-Federal Lands'' section, we determined the benefits of exclusion outweigh the minor benefits of designating lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6.

Exclusion Will Not Result in Extinction of the Species—Units 1 through 6 Western Riverside County MSHCP

We determined that exclusion of approximately 27,465 ac (11,115 ha) in Units 1 through 6 from the final revised designation of critical habitat for the Quino checkerspot butterfly will not result in extinction of the subspecies because the Western Riverside County MSHCP provides for conservation of this subspecies and its PCEs (Warm Springs Creek, Skinner/Johnson, Sage, Wilson Valley, Vail Lake/Oak Mountain, and Tule Peak/Silverado core occurrence complexes). While some loss of habitat for the Quino checkerspot butterfly is anticipated with the continued implementation of the Western Riverside County MSHCP, critical habitat was already designated in the majority of Units 1 through 6 prior to approval of the HCP.

Additionally, the Service conducted a consultation with the Western Riverside County MSHCP participants and continues to work with them through the implementation phase to ensure the HCP is implemented properly and providing conservation for the Quino checkerspot butterfly. Furthermore, the jeopardy standard of section 7 of the Act and routine implementation of habitat conservation through the section 7 process also provide assurances the subspecies will not go extinct. The exclusion leaves these protections unchanged from those that would exist if excluded areas were designated as critical habitat.

Critical habitat is being designated for the Quino checkerspot butterfly in other areas that will be accorded protection from adverse modification by Federal actions using the conservation standard in the Act consistent with the Ninth Circuit Court's decision in *Gifford Pinchot*. Additionally, the subspecies occurs on lands protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values. Existing protections acting in concert with the other protections provided under the Act for these lands, absent designation of critical habitat on them, and with protections afforded by the remaining critical habitat designation, lead us to find exclusion of lands in Units 1 through 6 covered by the Western Riverside County MSHCP will not result in extinction of the Quino checkerspot butterfly. Therefore, based on the above discussion, we are excluding approximately 27,465 ac (11,115 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 1 through 6 from this critical habitat designation.

Conservation Status of Unit 7 Western Riverside County MSHCP

Unit 7 contains approximately 4,387 ac (1,775 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP. As described above, conservation to meet the goals and objectives of the Western Riverside County MSHCP will occur within the defined Criteria Area; approximately 686 ac (278 ha) (17 percent) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 that meet the definition of critical habitat are within the Criteria Area.

In the 4 years of implementing the Western Riverside County MSHCP, no land within the Criteria Area in Unit 7 has been acquired for conservation as Additional Reserve Lands. Our interpretation of the written conservation criteria indicates that 15 percent (595 ac; 240 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 are targeted for conservation as Additional Reserve Lands (within our Conceptual Reserve Design).

Approximately 3,701 ac (1,498 ha) (about 84 percent) of land within Unit 7 that meets the definition of critical habitat and are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP fall outside the Criteria Area and, therefore, have no possibility of conservation under the HCP (by comparison, only 3 percent of Unit 2 in all of Units 1 through 6 falls into this category). The Service will work with our partners to fund and facilitate conservation of these approximately 3,701 ac (1,498 ha) of Quino checkerspot butterfly habitat that would not otherwise be conserved under the Western Riverside County MSHCP in Unit 7. However, we expect habitat losses will occur within these approximately 3,701 ac (1,498 ha) of land outside the Western Riverside County MSHCP Criteria Area. Although we believe preservation, conservation, and management of Quino checkerspot butterfly habitat provided for by this plan ensures the long-term conservation of this subspecies and its habitat within Units 1 through 6, subspecies conservation needs within the majority of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 (approximately 84 percent of these lands) are not addressed by the Western Riverside County MSHCP because they lie outside of the Criteria Area.

Benefits of Inclusion—Unit 7 Western Riverside County MSHCP

As described in detail above in the ''Benefits of Designating Critical Habitat'' section, the principle benefit of designating an area as critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed.

As described above in the ''Benefits of Inclusion – Units 1 through 6 Western Riverside County MSHCP'' section, the Western Riverside County MSHCP addresses conservation issues from a coordinated, integrated perspective and will achieve more Quino checkerspot butterfly conservation than would be achieved through section 7 consultations involving consideration of critical habitat. However, Quino checkerspot butterfly conservation measures under the Western Riverside County MSHCP does not address new information regarding Quino checkerspot butterfly distribution in Unit 7 (Bautista Road Core Occurrence Complex and associated habitats) because the importance of habitat in this area to the conservation of the Quino checkerspot butterfly was not understood when the Western Riverside County MSHCP permit was issued. Thus, the Western Riverside County MSHCP does not provide habitat conservation and other measures necessary to maintain the Bautista Road Core Occurrence Complex and support ongoing elevation range shift in the area. Furthermore, lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 are outside of the boundaries of currently designated Quino checkerspot butterfly critical habitat. Therefore, our HCP permit analysis did not address Unit 7 of this revised designation (Service 2004a, p. 287; FWS–WRIV–870.19).

Unit 7, along with the closest other core occurrence complex (Tule Peak/Silverado), supports the highest recorded post-listing Quino checkerspot butterfly abundance observations and the highest diversity of host plant species in the subspecies' extant range. Unit 7 is also the northernmost unit and contains the greatest elevational gradient within the extant range of the butterfly. The high diversity of host plants and the elevational gradient underscore the importance of this habitat to the butterfly in light of documented drought conditions and future drought predictions (see ''Background'' section above). Furthermore, we believe that non-core occurrence complexes north of the community of Anza (Unit 7) are the result of recent colonization events and an ongoing range shift in this subspecies upward in elevation. We expect Unit 7 to provide immigrants to higher elevation suitable habitat that is not yet occupied and to proximal higher elevation populations that may be temporarily extirpated during the course of range-edge expansion and therefore require immigrants for re-establishment (e.g., the Quinn Flat Non-core Occurrence Complex).

We believe losses may occur to Quino checkerspot butterfly habitat within the majority of the approximately 4,387 ac (1,775 ha) of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in

Unit 7. Therefore, the benefits of including these lands within designated critical habitat are greater than for lands conserved or targeted for conservation under the Western Riverside County MSHCP in Units 1 through 6. The area permitted for development under the Western Riverside County MSHCP is 25 percent of proposed critical habitat in Unit 7. Because lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 are largely outside the Criteria Area, conservation design under the Western Riverside County MSHCP does not capture the Bautista Road Core Occurrence Complex. Therefore, there is a significant regulatory benefit of designating the approximately 4,387 ac (1,775 ha) of land owned by or under the jurisdiction of the permittees of the HCP as critical habitat in this unit.

Another possible benefit of including lands in a critical habitat designation is the designation can serve to educate the landowners and the public regarding the potential conservation value of an area and may help focus conservation efforts to areas of high conservation value for certain species. Any information about the Quino checkerspot butterfly and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. As discussed above, additional distributional information demonstrating the significance of Unit 7 became available following completion of consultation on the Western Riverside County MSHCP, including the importance of populations in Unit 7 in supporting range shift resulting from environmental changes due to changing climate patterns (see ''**Background**'' and ''Criteria Used To Identify Critical Habitat'' sections above). The majority of lands in Unit 7 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP are not currently preserved or targeted for conservation under the HCP and the new information was not addressed by the HCP, therefore the permit holders of the HCP are not necessarily aware of the value of these lands to the conservation of the Quino checkerspot butterfly. Furthermore, no lands in Unit 7 were previously designated as critical habitat (Table 1) (67 FR 18356; April 15, 2002). With regard to occupied areas in Unit 7, the April 15, 2002, critical habitat designation stated ''[the Bautista Road Occurrence Complex] ...was first documented in 2001 following the publication of the [critical habitat] proposal and we do not currently have sufficient information concerning habitat within the complex and landscape connectivity to other complexes to determine that it is essential to the conservation of the [sub]species.'' Although all lands in Unit 7 were included in the proposed revised designation, this final revised critical habitat designation will continue to provide useful educational information to the public.

Benefits of Exclusion—Unit 7 Western Riverside County MSHCP

There are benefits of excluding the approximate 4,387 ac (1,775 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Unit 7 from revised critical habitat. We believe benefits would be realized by forgoing the designation of critical habitat on these lands including: (1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP permittees and stakeholders to promote further conservation of the Quino checkerspot butterfly and its habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward recovering this subspecies, including conservation benefits that might not otherwise occur; and (3) encouragement of development of additional HCPs and other conservation plans in the future on other private lands for this and other federally listed and sensitive species. Please see the ''Benefits of Exclusion – Units 1 through 6 Western Riverside County MSHCP'' section for additional discussion related to partnerships and landscape-scale conservation benefits.

The Benefits of Inclusion Outweigh the Benefits of Exclusion—Unit 7 Western Riverside County MSHCP

We reviewed and evaluated the exclusion of approximately 4,387 ac (1,775 ha) ha) of land within Unit 7 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP from designation of revised critical habitat and determined the benefits of designating these lands as critical habitat outweigh the benefits of excluding them.

We recognize there are significant benefits of excluding lands within the Western Riverside County MSHCP from critical habitat. The exclusion of these lands from critical habitat would help preserve the partnerships we developed with the local jurisdictions and project proponents in the development of the Western Riverside County MSHCP and foster additional partnerships for the benefit of all species of concern on lands owned by or under the jurisdiction of the permittees of the HCP. Although the Western Riverside County MSHCP will provide significant preservation and management of habitat for the Quino checkerspot butterfly and help reach recovery goals for this subspecies in Units 1 through 6, the plan does not conserve the Bautista Road Core Occurrence Complex (Unit 7) because this area was identified as a core occurrence complex following completion of the Western Riverside County MSHCP.

We believe the benefits of designating lands within Unit 7 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP as critical habitat are more significant than the benefits of excluding them. Critical habitat was not previously designated in Unit 7; therefore, the effects of permit issuance on critical habitat in this area were not analyzed in a biological opinion, and the educational benefits of HCP analysis and critical habitat designation were not realized. Unit 7 supports the Bautista Road Core Occurrence Complex and associated habitat and non-core occurrence complexes which we believe are needed to support a resilient core population, as well as ongoing range shift of this subspecies upward in elevation. This unit contains the greatest elevational gradient and highest diversity of host plant species within the extant range of the butterfly. Furthermore, substantial losses to Quino checkerspot butterfly habitat within Unit 7 may occur on 3,701 ac (1,498 ha) outside the Criteria Area. We do not anticipate that monitoring and management of lands within the Criteria Area of Unit 7 will ensure continued occupancy of this core occurrence complex. Finally, we find that there will be significant educational benefits of designation in this unit, not already met by the HCP approval process, previous critical habitat designation, or publication of proposed revised critical habitat. Therefore, we conclude the regulatory protections that may be afforded through critical habitat designation in Unit 7 are greater than the conservation benefits provided by the Western Riverside County MSHCP in this unit.

In summary, we determined the benefits of including Unit 7 in designated critical habitat outweigh the benefits of exclusion; therefore, we are designating all 4,387 ac (1,775 ha) of land within Unit 7 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP as revised critical habitat.

**Required Determinations**

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this rule is not significant under 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, 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 (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. In this final rule, we are certifying that the critical habitat designation for the Quino checkerspot butterfly will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and community 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 revised designation of critical habitat for the Quino checkerspot butterfly would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. 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. To estimate 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 affects activities conducted, funded, permitted, or authorized by Federal agencies.

Designation of critical habitat affects only 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 the Quino checkerspot butterfly. 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.

In the DEA of the proposed revisions to critical habitat, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revisions to critical habitat for the Quino checkerspot butterfly. The DEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in sections 2 through 7. The DEA evaluates the potential for economic impacts related to activity categories including residential development, tribal activities, habitat management, and non-residential development. The DEA concludes that the incremental impacts resulting from this rulemaking that may be borne by small businesses will be associated only with residential development. 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 largest impacts of the proposed rule result from section 7 consultations with the Service on development projects likely to occur in areas where surveys are unable to detect the Quino checkerspot butterfly. The exclusions made in this final revised rule do not affect this analysis in the DEA. In the high estimate scenario, five projects in Unit 9 and nine projects in Unit 10 were identified as likely to require consultation with the Service as a result of the proposed rule. Conservatively assuming that each project is undertaken by a separate entity, as many as 14 developers were identified as likely to be affected over the 23–year time frame of the analysis. Furthermore, approximately six developers per year were identified as potentially experiencing impacts that likely represent less than one percent of the value of a new home. At the high-end, the one-time costs resulting from the consultation process, including administrative time spent by the businesses, compensation costs, and the value of time delays, totaled approximately $16.1 million for the projects in Unit 9 and $26.8 million for the projects in Unit 10. No information regarding the probability that these businesses are small entities is available. However, assuming they are small businesses, we are certifying that the number of small entities (14) that could be significantly affected is not substantial, and that the critical habitat designation for the Quino checkerspot butterfly will not have a significant economic impact on these small entities.

*Energy Supply, Distribution, or Use—Executive Order 13211*

On May 18, 2001, the President issued E.O. 13211 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. This revision to critical habitat for the Quino checkerspot butterfly is not considered a significant regulatory action under E.O. 12866. OMB has provided guidance for

implementing this Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The FEA identified Calpine Corporation, San Diego Gas and Electric, and Southern California Edison as entities involved in the production of energy. As discussed in Appendix A, the FEA finds that none of these outcomes are likely to occur. As such, the final designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, 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 (2 U.S.C. 1501), the Service makes the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or 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.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly affected 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 affected 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.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to project modifications that may need to be made for development; 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.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Quino checkerspot butterfly 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 final revised designation of critical habitat for the Quino checkerspot butterfly does not pose significant takings implications.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California; however, we did not receive any comments from State agencies. The majority of land (68 percent) being designated is not State or locally-owned and, therefore, the designation has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the subspecies 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 E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the Quino checkerspot butterfly.

*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 Circuit Court of the United States 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 assertion was upheld by the Circuit Court of the United States 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), 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. 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.

In the proposed revisions to critical habitat published in the **Federal Register** on January 17, 2008 (73 FR 3328), we proposed approximately 1,203 ac (487 ha) of Cahuilla Band of Indians' and approximately 79 ac (ha) of Ramona Band of Cahuilla Indians' lands in Riverside County, and approximately 3,156 ac (1277 ha) of land within Campo Band of Kumeyaay Indians' lands in San Diego County as critical habitat for the Quino checkerspot butterfly. We worked directly with the tribes to determine economic and other burdens expected to result from critical habitat designation on tribal lands, and as a result of information exchanged, are excluding all tribal lands meeting the definition of critical habitat for the Quino checkerspot butterfly from this final revised designation under section 4(b)(2) of the Act (see ''**Application of Section 4(b)(2) –Impacts to Government-To-Government Relationships With Tribes And Economics**'' section above).

**References Cited**

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/carlsbad/*.

**Author(s)**

The primary author of this notice is the staff from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(i), revise the entry for ''Quino Checkerspot Butterfly (*Euphydryas editha quino*)'' to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(i) *Insects.*

* * * * *

Quino Checkerspot Butterfly (*Euphydryas editha quino*)

(1) Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Quino checkerspot butterfly are:

(i) Open areas within scrublands at least 21.5 square feet (ft2) (2 square meters (m)) in size that:

(A) Contain no woody canopy cover; and

(B) Contain one or more of the host plants *Plantago erecta, Plantago patagonica*, *Antirrhinum coulterianum*, or *Collinsia concolor* used for Quino checkerspot butterfly growth, reproduction, and feeding; or

(C) Contain one or more of the host plants *Cordylanthus rigidus* or *Castilleja exserta* that are within 328 ft (100 m) of the host plants listed in paragraph (2)(i)(B) above; or

(D) Contain flowering plants with a corolla tube less than or equal to 0.43 in (11 mm) used for Quino checkerspot butterfly feeding;

(ii) Open scrubland areas and vegetation within 656 ft (200 m) of the open canopy areas (described in paragraph (2)(i) of this entry) used for movement and basking; and

(iii) Hilltops or ridges within scrublands, containing an open, woody-canopy area at least 21.5 $ft^2$ (2 $m^2$) in size used for Quino checkerspot butterfly mating (hilltopping behavior) and are contiguous with (but not otherwise included in) open areas and natural vegetation described in paragraphs (2)(i) and (ii) above.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing 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 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note*: Index map of critical habitat units for the Quino checkerspot butterfly follows:

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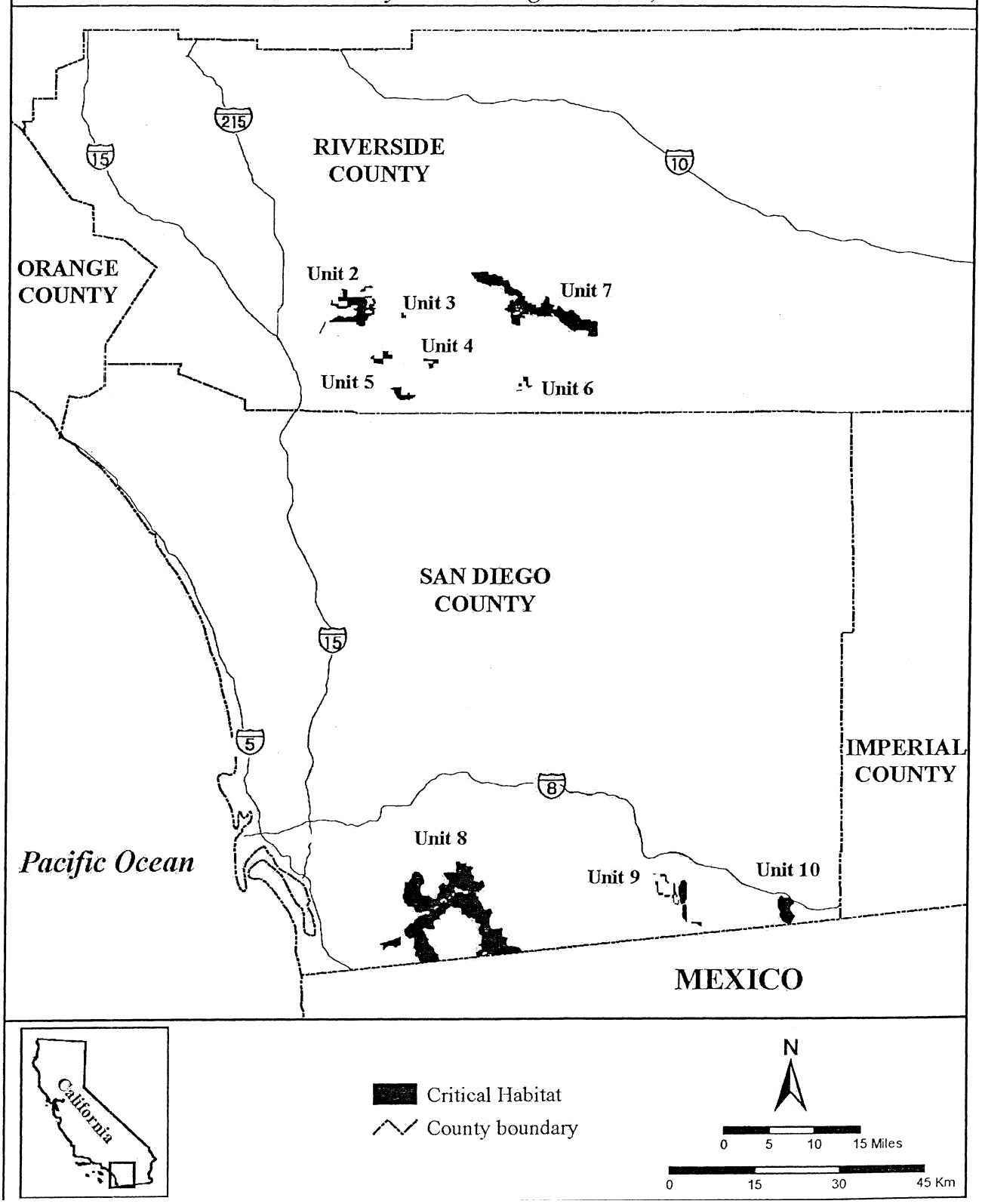
Map 1: Index
Critical Habitat for *Euphydryas editha quino* (Quino checkerspot butterfly),
Riverside County and San Diego Counties, California

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(6) Unit 2: Skinner/Johnson, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Murrieta, Bachelor Mountain, Winchester, Sage, and Hemet. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 499480, 3720871; 498641, 3720857; 498511, 3720856; 498353, 3720855; 498593, 3720996; 498642, 3721009; 499082, 3721122; 499479, 3721141; 499529, 3721143; 499731, 3721103; 499738, 3721101; 499829, 3720955; 499918, 3720879; thence returning to 499480, 3720871. Continue to 497696, 3720235; 497728, 3720291; 497832, 3720397; 498082, 3720651; 498640, 3720657; 498640, 3720445; 498639, 3720257; 498639, 3720257; 498059, 3720244; 497833, 3720239; 497778, 3720238; thence returning to 497696, 3720235. Continue to 494486, 3720445; 494486, 3720445; 494496, 3720550; 494671, 3720558; 494796, 3720564; 495236, 3720522; 495415, 3720453; 495475, 3720430; 495475, 3720430; 495474, 3720194; 495474, 3720033; 495470, 3719192; 496227, 3719210; 496269, 3719211; 496291, 3719212; 496669, 3719221; 497068, 3719231; 497401, 3719235; 497436, 3719236; 497456, 3719236; 497636, 3719238; 497727, 3719239; 497838, 3719241; 498238, 3719245; 498463, 3719247; 498638, 3719249; 498647, 3719249; 498648, 3719249; 498654, 3719249; 498722, 3719250; 499106, 3719253; 499141, 3719254; 499290, 3719254; 499723, 3719253; 499723, 3719253; 499641, 3719206; 499612, 3719190; 499612, 3719190; 499544, 3719046; 499543, 3719044; 499543, 3719044; 499540, 3719034; 499529, 3719035; 499526, 3719035; 499524, 3719035; 499523, 3719035; 499523, 3719036; 499080, 3719076; 499079, 3719074; 499065, 3719034; 499065, 3719034; 499063, 3719029; 499059, 3719017; 498910, 3719042; 498899, 3719044; 498888, 3719047; 498877, 3719051; 498866, 3719054; 498856, 3719059; 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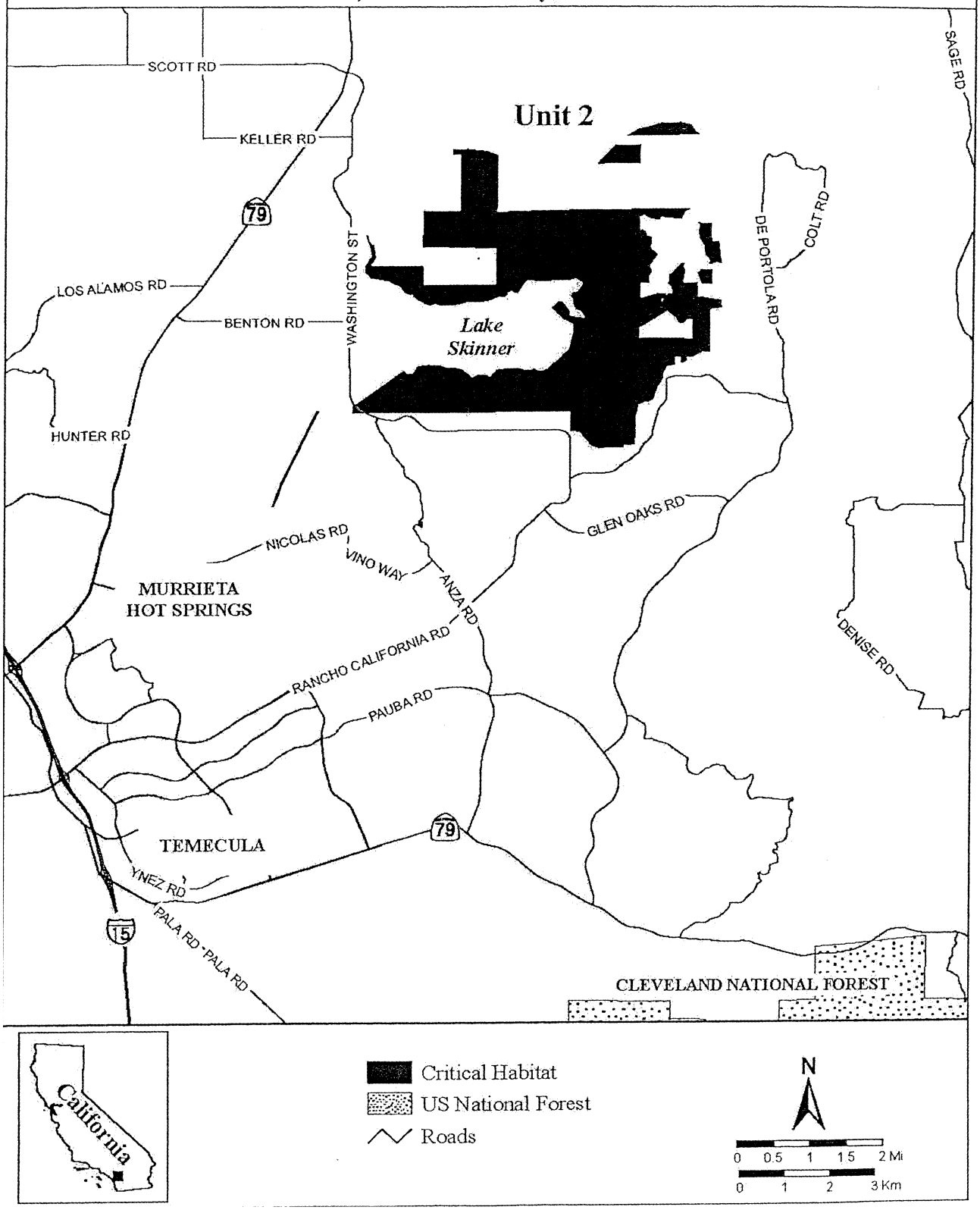
(ii) *Note*: Map of Unit 2, Skinner/Johnson follows:

BILLING CODE 4310–55–S

Map of
Critical Habitat for *Euphydryas editha quino* (Quino checkerspot butterfly)
Unit 2, Riverside County, California



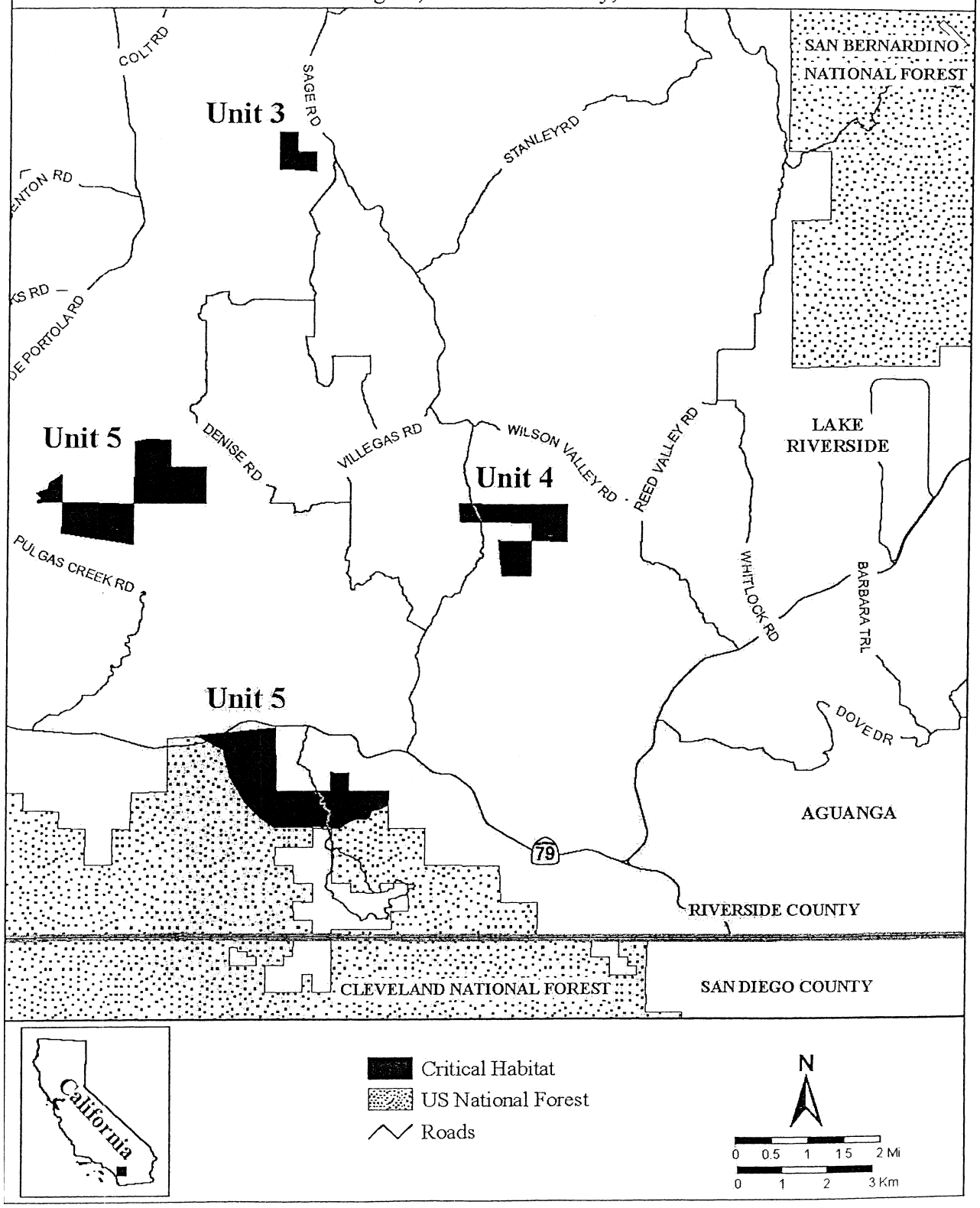

BILLING CODE 4310–55–C

(7) Unit 3: Sage Unit, Riverside County, California.

(i) From USGS 1:24,000 quadrangle Sage. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 505035, 3716405; 505035, 3716405; 505175, 3716404; 505175, 3716404; 505245, 3716403; 505267, 3716403; 505380, 3716402; 505427, 3716402; 505429, 3716017; 505429, 3715985; 505432, 3715985; 505727, 3715975; 505831, 3715971; 505831, 3715971; 505831, 3715774; 505831, 3715547; 505025, 3715591; 505025, 3715611; 505026, 3715641; 505027, 3715789; 505027, 3715789; 505029, 3715890; 505030, 3715988; 505032, 3716141; 505032, 3716189; 505032, 3716189; thence returning to 505035, 3716405.

(ii) *Note*: Map of Unit 3 (Sage Unit), Unit 4 (Wilson Valley Unit), and Unit 5 (Vail Lake/Oak Mountain Unit) follows:

Map of
Critical Habitat for *Euphydryas editha quino* (Quino checkerspot butterfly)
Units 3 through 5, Riverside County, California




BILLING CODE 4310–55–C

(8) Unit 4: Wilson Valley Unit, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Cahuilla Mountain, Sage, and Vail Lake. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 510234, 3707784; 510234, 3707785; 510234, 3707800; 510234, 3707808; 509911, 3707810; 509378, 3707813; 509357, 3707813; 509356, 3707812; 509356, 3707812; 509094, 3707816; 509094, 3707816; 509094, 3707816; 509092, 3707833; 509092, 3707835; 509064, 3708174; 509061, 3708213; 509060, 3708216; 509060, 3708217; 509311, 3708214; 509360, 3708214; 509412, 3708213; 509447, 3708213; 509447, 3708213; 509535, 3708212; 509558, 3708212; 509712, 3708211; 509854, 3708209; 509870, 3708209; 509870, 3708209; 509870, 3708209; 509935, 3708209; 510386, 3708205; 510689, 3708203; 511420, 3708197; 511480, 3708197; 511507, 3708197; 511507, 3708197; 511507, 3708172; 511507, 3708066; 511507, 3708066; 511506, 3707959; 511506, 3707934; 511505, 3707784; 511504, 3707636; 511504, 3707594; 511503, 3707514; 511503, 3707503; 511503, 3707503; 511503, 3707375; 511502, 3707375; 511087, 3707383; 510706, 3707390; 510706, 3707390; 510706, 3707390; 510706, 3707424; 510704, 3707599; 510702, 3707780; 510680, 3707780; 510595, 3707781; thence returning to 510234, 3707784. Continue to 510706, 3707390; 510707, 3707301; 510715, 3706625; 510715, 3706625; 510035, 3706610; 510035, 3706610; 510025, 3706704; 510024, 3706709; 510024, 3706712; 510015, 3706798; 509994, 3707007; 509994, 3707007; 509973, 3707206; 509973, 3707206; 509963, 3707305; 509953, 3707404; 509953, 3707404; 510609, 3707392; 510678, 3707390; thence returning to 510706, 3707390.

(ii) *Note*: Unit 4 (Wilson Valley) for the Quino checkerspot butterfly is depicted on the map in paragraph (7)(ii) of this entry.

(8) Unit 5: Vail Lake/Oak Mountain Unit, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Bachelor Mountain, Sage, Pechanga, and Vail Lake. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 501858, 3709596; 501858, 3709596; 502139, 3709646; 502615, 3709631; 502626, 3709625; 502643, 3709615; 502643, 3709609; 502642, 3709465; 502642, 3709465; 502641, 3709286; 502641, 3709256; 502640, 3709087; 502640, 3709074; 502640, 3709046; 503036, 3709037; 503036, 3709037; 503174, 3709034; 503340, 3709031; 503433, 3709028; 503434, 3708993; 503434, 3708987; 503434, 3708987; 503434, 3708899; 503435, 3708725; 503435, 3708713; 503435, 3708707; 503435, 3708707; 503437, 3708213; 503437, 3708213; 503437, 3708213; 501828, 3708226; 501828, 3708226; 501828, 3708226; 501829, 3708245; 501829, 3708258; 501841, 3708792; 501844, 3708936; 501849, 3709192; 501853, 3709344; 501853, 3709354; 501853, 3709364; thence returning to 501858, 3709596. Continue to 500229, 3708250; 500085, 3708249; 499766, 3708247; 499671, 3708246; 499671, 3708246; 499668, 3708295; 499768, 3708331; 499694, 3708419; 499652, 3708468; 499727, 3708495; 499768, 3708510; 499887, 3708558; 499915, 3708657; 499987, 3708725; 500070, 3708773; 500134, 3708820; 500154, 3708832; 500220, 3708869; 500220, 3708868; thence returning to 500229, 3708250. Continue to 501828, 3708226; 501830, 3708001; 501831, 3707844; 501833, 3707599; 501834, 3707442; 501835, 3707394; 501835, 3707318; 501835, 3707318; 501550, 3707363; 501429, 3707383; 501022, 3707448; 500616, 3707513; 500397, 3707548; 500210, 3707578; 500210, 3707578; 500210, 3707582; 500214, 3707723; 500226, 3708156; 500229, 3708250; 500229, 3708250; 500229, 3708250; 500719, 3708249; 501023, 3708249; 501441, 3708237; 501466, 3708236; 501737, 3708229; 501801, 3708227; 501817, 3708226; thence returning to 501828, 3708226. Continue to 507529, 3701874; 507531, 3701777; 507532, 3701729; 507532, 3701729; 507513, 3701663; 507489, 3701583; 507470, 3701544; 507352, 3701469; 507350, 3701469; 507350, 3701467; 507271, 3701434; 507218, 3701448; 507155, 3701416; 507129, 3701371; 507113, 3701304; 507071, 3701262; 506993, 3701239; 506916, 3701235; 506865, 3701235; 506805, 3701244; 506703, 3701200; 506640, 3701170; 506568, 3701135; 506494, 3701063; 506399, 3701047; 506264, 3701054; 506246, 3701061; 506242, 3701061; 506242, 3701072; 505840, 3701071; 505840, 3701071; 505840, 3701068; 505840, 3701068; 505833, 3701068; 505723, 3701058; 505713, 3701052; 505415, 3701052; 505035, 3701052; 505013, 3701052; 504656, 3701290; 504313, 3701648; 504171, 3701886; 503985, 3702199; 503837, 3702780; 503528, 3702954; 503528, 3702954; 503494, 3702973; 503477, 3702981; 503477, 3702981; 503417, 3703009; 503271, 3703077; 503258, 3703095; 503250, 3703106; 503340, 3703114; 503415, 3703121; 503866, 3703163; 503873, 3703164; 503946, 3703171; 503953, 3703172; 505023, 3703271; 505023, 3703271; 505026, 3703040; 505026, 3703040; 505029, 3702852; 505029, 3702852; 505030, 3702776; 505031, 3702723; 505031, 3702702; 505039, 3702145; 505043, 3701881; 505043, 3701881; 505266, 3701880; 505443, 3701879; 505443, 3701879; 505722, 3701878; 505843, 3701877; 505848, 3701877; 506242, 3701875; 506242, 3701875; 506242, 3702278; 506244, 3702278; 506643, 3702274; 506643, 3702106; 506642, 3702087; 506642, 3701873; 506642, 3701873; 506657, 3701873; 506684, 3701873; 507103, 3701873; 507282, 3701874; thence returning to 507529, 3701874.

(ii) *Note*: Unit 5 (Vail Lake/Oak Mountain) for the Quino checkerspot butterfly is depicted on the map in paragraph (7)(ii) of this entry.

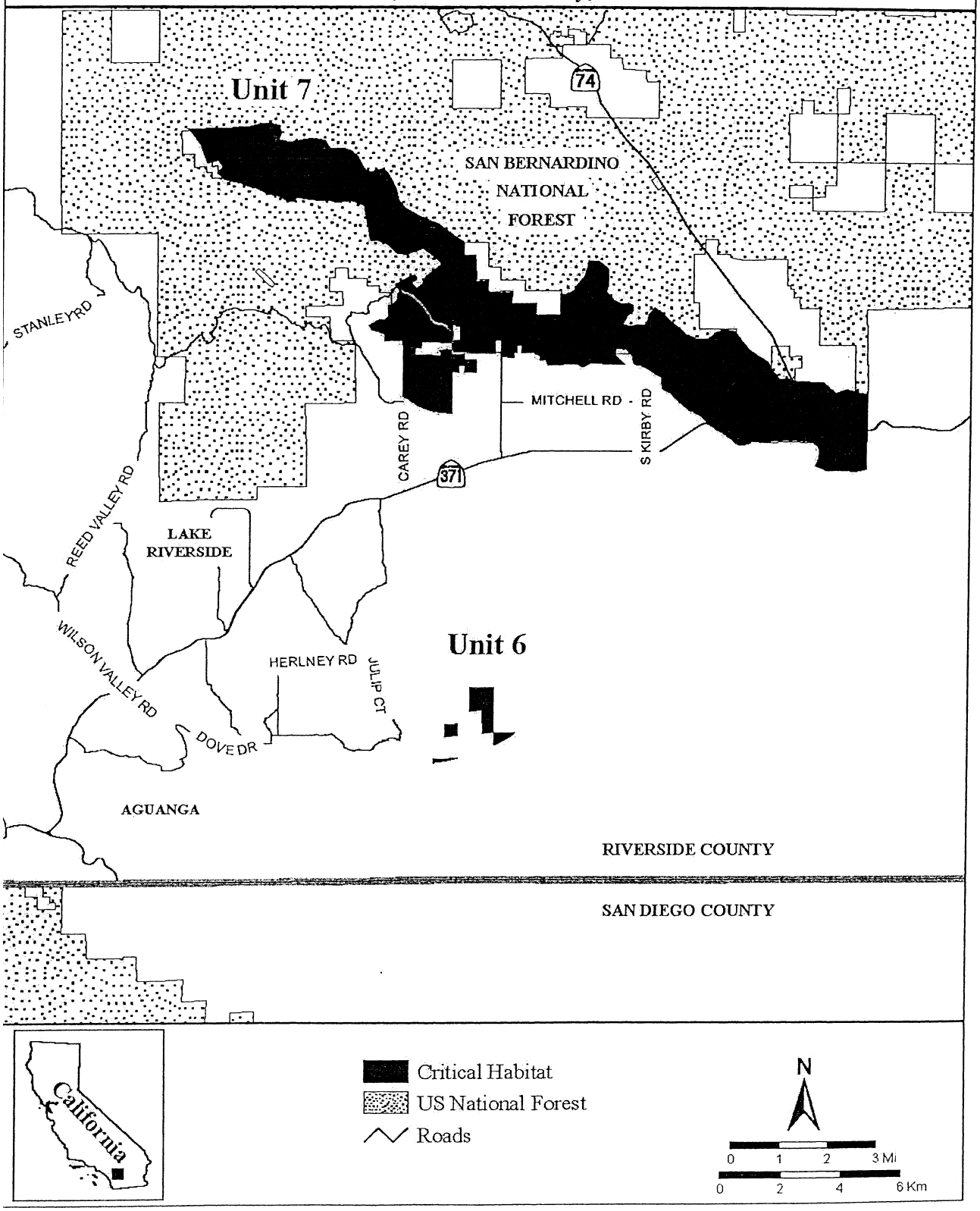
(10) Unit 6: Tule Peak Unit, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Aguanga, Beauty Mountain, and Anza. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 527628, 3703575; 527233, 3703541; 527233, 3703541; 527232, 3703658; 527230, 3703925; 527230, 3703934; 527229, 3704074; 527228, 3704118; 527226, 3704307; 526831, 3704287; 526824, 3704287; 526813, 3704286; 526813, 3704286; 526811, 3704467; 526806, 3704812; 526803, 3705067; 527305, 3705070; 527625, 3705073; 527626, 3704522; 527626, 3704231; 527627, 3703961; 527627, 3703809; 527627, 3703725; 527627, 3703709; 527628, 3703696; 527628, 3703575; thence returning to 527628, 3703575. Continue to 526311, 3703859; 526400, 3703866; 526403, 3703470; 526403, 3703470; 526365, 3703467; 526040, 3703439; 525983, 3703434; 525980, 3703823; 525980, 3703835; thence returning to 526311, 3703859. Continue to 528328, 3703573; 528328, 3703573; 528310, 3703558; 528208, 3703471; 528051, 3703364; 527873, 3703263; 527737, 3703197; 527631, 3703161; 527630, 3703161; 527630, 3703161; 527628, 3703575; 527628, 3703575; 528134, 3703574; 528153, 3703574; thence returning to 528328, 3703573. Continue to 526412, 3702730; 526363, 3702718; 525995, 3702627; 525987, 3702626; 525605, 3702584; 525588, 3702582; 525588, 3702582; 525588, 3702696; 525588, 3702696; 525854, 3702707; 525986, 3702713; 526140, 3702719; 526368, 3702728; thence returning to 526412, 3702730.

(ii) *Note*: Map of Unit 6 (Tule Peak) and Unit 7 (Bautista) follows:

BILLING CODE 4310–55–S

Map of
Critical Habitat for *Euphydryas editha quino* (Quino checkerspot butterfly)
Units 6 and 7, Riverside County, California




BILLING CODE 4310–55–C

(8) Unit 7: Bautista Unit, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Anza, Butterfly Peak, Blackburn Canyon, and Idyllwild. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 524940, 3714398; 524927, 3714405; 524915, 3714413; 524912, 3714415; 524909, 3714416; 524891, 3714427; 524867, 3714442; 524861, 3714445; 524843, 3714457; 524824, 3714470; 524819, 3714473; 524796, 3714488; 524773, 3714505; 524750, 3714521; 524727, 3714538; 524704, 3714555; 524702, 3714557; 524687, 3714568; 524679, 3714573; 524654, 3714586; 524629, 3714600; 524617, 3714607; 524605, 3714614; 524580, 3714629; 524556, 3714644; 524532, 3714659; 524513, 3714671; 524509, 3714674; 524492, 3714686; 524485, 3714690; 524480, 3714693; 524481, 3714769; 524482, 3715168; 524477, 3716096; 524477, 3716098; 524477, 3716098; 524477, 3716100; 524471, 3716251; 524469, 3716299; 524465, 3716399; 524461, 3716501; 524460, 3716518; 524266, 3716521; 524066, 3716524; 524027, 3716524; 523864, 3716521; 523861, 3716521; 523854, 3716740; 523656, 3716816; 523633, 3716826; 523462, 3716890; 523431, 3716902; 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(ii) *Note*: Unit 7 (Bautista) for the Quino checkerspot butterfly is depicted on the map in paragraph (10)(ii) of this entry.

(8) Unit 8: Otay Unit, San Diego County, California.

(i) From USGS 1:24,000 quadrangles Jamul Mountains, Dulzura, Otay Mesa, Otay Mountain, and Tecate. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 505693, 3606447; 505703, 3606427; 505702, 3606427; 505702, 3606426; 505693, 3606046; 505691, 3605963; 505687, 3605768; 505677, 3605363; 505668, 3604969; 505635, 3604959; 505560, 3604935; 505239, 3604836; 505150, 3604808; 505147, 3604807; 505125, 3604572; 505124, 3604564; 504912, 3604574; 504650, 3604587; 504549, 3604707; 504464, 3604807; 503596, 3604788; 503441, 3604784; 503423, 3604784; 502983, 3604518; 502810, 3604205; 502732, 3604207; 502715, 3605000; 502151, 3605003; 502141, 3605216; 502141, 3605222; 502335, 3605289; 502913, 3605488; 502919, 3605481; 502922, 3605478; 503260, 3605591; 503260, 3605593; 503257, 3605604; 503255, 3605606; 503274, 3605613; 503537, 3605704; 503545, 3605706; 503856, 3605814; 503909, 3605832; 503935, 3605840; 504176, 3605924; 504337, 3605979; 504546, 3606052; 504617, 3606076; 504799, 3606141; 505139, 3606262; 505378, 3606338; 505594, 3606413; 505692, 3606446; 505693, 3606447; thence returning to 505693, 3606447. Continue to 506421, 3607499; 506490, 3607502; 506512, 3607503; 506510, 3607549; 506510, 3607549; 506489, 3607885; 506564, 3607917; 506564, 3607917; 506776, 3608010; 506859, 3608047; 506976, 3608221; 507010, 3608271; 507025, 3608294; 507168, 3608518; 507452, 3608739; 507453, 3608758; 507569, 3608830; 507852, 3608932; 507977, 3608971; 508040, 3609097; 508040, 3609363; 508199, 3609449; 508324, 3609517; 508518, 3609622; 508714, 3609755; 508740, 3609897; 508745, 3609928; 508824, 3610006; 508996, 3610006; 509114, 3610061; 509177, 3610137; 509190, 3610152; 509192, 3610155; 509333, 3610179; 509420, 3610202; 509490, 3610163; 509537, 3610108; 509537, 3610202; 509553, 3610351; 509725, 3610390; 509984, 3610508; 510011, 3610531; 510039, 3610555; 510149, 3610563; 510305, 3610500; 510517, 3610469; 510666, 3610508; 510713, 3610641; 510792, 3610822; 510828, 3610885; 510909, 3611025; 510930, 3611061; 511066, 3611284; 511301, 3611402; 511497, 3611417; 511497, 3611226; 511497, 3611221; 511676, 3611260; 511787, 3611284; 512102, 3611553; 512218, 3611653; 512210, 3611672; 512171, 3611755; 512265, 3612060; 512273, 3612311; 512352, 3612421; 512508, 3612507; 512610, 3612531; 512691, 3612505; 512759, 3612484; 512785, 3612488; 512844, 3612496; 512872, 3612501; 512916, 3612507; 513018, 3612593; 513049, 3612664; 513144, 3612719; 513261, 3612742; 513266, 3612803; 513267, 3612819; 513269, 3612844; 513295, 3612845; 513313, 3612846; 513418, 3612851; 513457, 3612852; 513567, 3612758; 513567, 3612664; 513567, 3612523; 513620, 3612383; 513653, 3612295; 513880, 3612084; 513953, 3612024; 514096, 3611906; 514147, 3611864; 514249, 3611966; 514177, 3611992; 514163, 3611998; 514139, 3612068; 513990, 3612209; 513888, 3612217; 513786, 3612350; 513763, 3612499; 513810, 3612617; 513833, 3612627; 513935, 3612672; 514006, 3612774; 514147, 3612876; 514148, 3612877; 514232, 3612971; 514280, 3613025; 514335, 3613158; 514406, 3613236; 514471, 3613282; 514539, 3613330; 514546, 3613351; 514552, 3613367; 514610, 3613526; 514798, 3613636; 514939,

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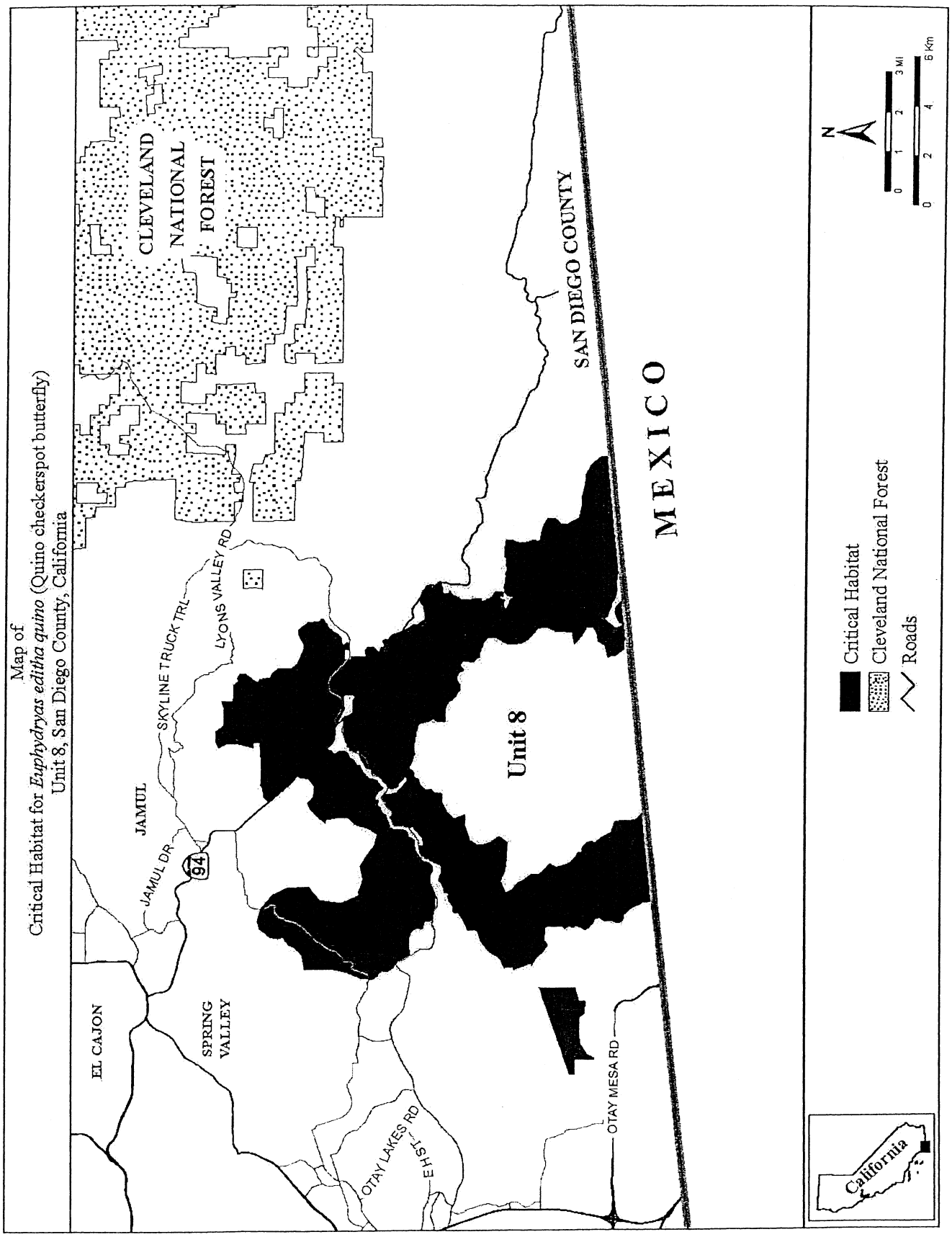
(ii) *Note*: Map of Unit 8 (Otay) follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(13) Unit 9: La Posta/Campo Unit, San Diego County, California.

(i) From USGS 1:24,000 quadrangles Cameron Corners, Live Oak Springs, Campo, Tierra Del Sol. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 555235, 3612703; 555266, 3612642; 555282, 3612538; 555299, 3612347; 555299, 3612204; 555289, 3612185; 555286, 3612179; 555258, 3612122; 555255, 3612116; 555250, 3612113; 555196, 3612065; 555167, 3612040; 555141, 3612041; 554992, 3612051; 554790, 3612076; 554773, 3612078; 554750, 3612088; 554644, 3612135; 554616, 3612172; 555239, 3612178; thence returning to 555235, 3612703. 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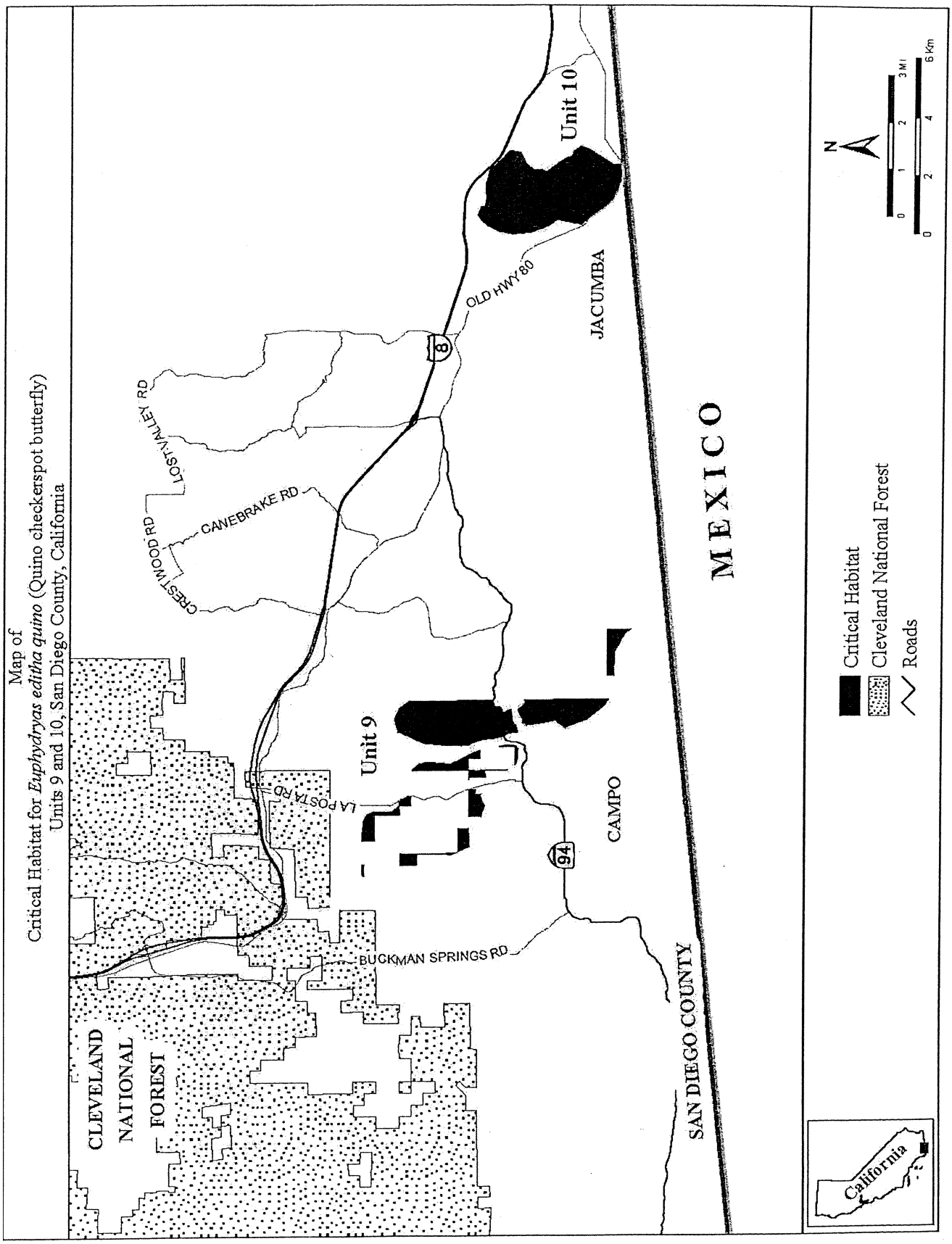
(ii) *Note*: Map of Unit 9 (La Posta/Campo) follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(14) Unit 10: Jacumba Unit, San Diego County, California.

(i) From USGS 1:24,000 quadrangles Jacumba, and Jacumba OE S. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 573863, 3613297; 574023, 3613274; 574161, 3613286; 574253, 3613292; 574396, 3613303; 574510, 3613303; 574638, 3613245; 574759, 3613218; 574955, 3613176; 575272, 3612817; 575656, 3612485; 575643, 3612410; 575643, 3612410; 575586, 3612080; 575458, 3612014; 575458, 3612014; 575439, 3612004; 575439, 3612004; 575245, 3611903; 575131, 3611815; 575017, 3611638; 575017, 3611608; 575017, 3611608; 575017, 3611404; 574935, 3611182; 575207, 3610803; 575428, 3610462; 575453, 3610310; 575637, 3610253; 575798, 3610029; 575798, 3610029; 575801, 3610025; 575696, 3609704; 575637, 3609610; 575634, 3609606; 575431, 3609284; 575322, 3609111; 575204, 3608925; 575204, 3608842; 575204, 3608780; 575204, 3608757; 575204, 3608606; 575204, 3608573; 575204, 3608558; 575172, 3608561; 574790, 3608586; 574711, 3608610; 574601, 3608645; 574490, 3608679; 574390, 3608710; 574377, 3608716; 574203, 3608800; 574198, 3608803; 574018, 3608889; 573950, 3608954; 573770, 3609124; 573586, 3609379; 573412, 3609620; 573227, 3609838; 573109, 3609978; 573149, 3610253; 573259, 3610819; 573038, 3611122; 573002, 3611221; 572980, 3611281; 572926, 3611429; 572872, 3611577; 572831, 3611688; 572824, 3611763; 572807, 3611925; 572803, 3611958; 572762, 3612351; 572770, 3612391; 572850, 3612772; 572860, 3612821; 573028, 3613163; 573037, 3613182; 573049, 3613205; 573238, 3613440; 573433, 3613566; 573668, 3613480; 573731, 3613440; 573737, 3613337; thence returning to 573863, 3613297.

(ii) *Note*: Unit 10 (Jacumba) for the Quino checkerspot butterfly is depicted on the map in paragraph (13)(ii) of this entry.

* * * * *

Dated: June 8, 2009,

**Jane Lyder,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9–13800 Filed 6–16–09; 8:45 am]

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